

23

PROFESSIONAL STANDARDS ANNUAL REPORT 2023



PROFESSIONAL
STANDARDS
THE LAW SOCIETY
OF NEW SOUTH WALES

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Junior Vice President: J. Ball

Immediate Past President: J. van der Plaats

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J. Dawson (Councillor and Deputy Chairperson)

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Ethics Committee (as at 30 June 2023)

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Costs Committee (as at 30 June 2023)

H. Macken (Chairperson)

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Disclosure Committee (as at 30 June 2023)

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R. MacSweeney (Councillor and Deputy Chairperson)

D. Captain-Webb, S. Baxter, R. Benzie, R. Bryden, L. Chee, S. Heron, N. Kroesche, C. McCusker, J. Patterson, J. Pope, A. Sarmed, J. Sutton, A. Tattersall, A. Tiedt

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Content: Professional Standards Department

Editing: Content & Communications Department

Design: Marketing Department

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INTRODUCTION

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

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

Specifically, Professional Standards:

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

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

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

OUR MISSION

The mission of Professional Standards is to:

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

OUR VALUES

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

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

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

This year Professional Standards released the Statement of Regulatory Approach. The Statement adopts a risk based, outcomes focused approach to the exercise of regulatory functions. It describes the Department’s approach to decision making, including a focus on areas where there is a risk of serious harm to consumers or to the administration of justice.

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

This Annual Report is an overview of the work undertaken by Professional Standards from **1 July 2022 to 30 June 2023 (2022/2023)**. Where relevant, comparative data for the period from **1 July 2021 to 30 June 2022** (the previous reporting period) is provided. The statistical information set out in this report, in conjunction with the Law Society Annual Report, complies with the reporting requirements of the legal profession legislation.

PRESIDENT'S MESSAGE



The Law Society maintains a responsible and diligent approach in seeking to resolve complaints, demonstrating the ongoing role of the Law Society in maintaining professional standards for the legal profession.

The Law Society and its role in Professional Standards

In my role as President of the Law Society of New South Wales, it is with great pride that I present the Annual Report of the Professional Standards Department for 2023.

The Law Society is committed to maintaining the highest professional standards of the legal profession, thereby ensuring public confidence in the integrity of legal services provided to the community. The Law Society strives to maintain an independent, transparent and accountable legal profession by ensuring these professional standards through leadership, regulation and review.

The complaint process – inquiry, investigation and prosecution

The co-regulatory role of the Law Society, in conjunction with the NSW Office of the Legal Services Commissioner, provides an efficient, robust and transparent mechanism for the investigation and review of solicitors.

Complaints on the conduct of any solicitor referred to the Law Society are assessed, and, if appropriate, investigated. Following an investigation, disciplinary action may be taken.

A key focus this year has been on improving the timeliness with which complaints are dealt with. Changes have been implemented so that the Society now deals with more than 70% of matters within 12 months.

The Law Society maintains a responsible and diligent approach in seeking to resolve complaints, demonstrating the ongoing role of the Law Society in maintaining professional standards for the legal profession.

Leadership and guidance for the legal profession

The needs of the legal profession are constantly monitored by the Law Society and, in response to the ongoing role of leadership and guidance with the purpose of maintaining professional standards, the Society has enhanced its education role with the profession. As well as providing a range of new continuing education courses, this year saw the launch of the *Ethics and Standards Quarterly*, which provides practitioners with practical information to help them navigate ethical and professional conduct issues.

We of course continue to provide specialised assistance through the Professional Support Unit in the areas of Costs, Ethics and Regulatory Compliance. This service is provided in conjunction with review and guidance provided by the Ethics Committee. This will continue, with new areas to be addressed. These include the expanded use of technology, the ethical issues around engaging with Artificial Intelligence, and the impact of law reform in money laundering and commercial transactions. This will be achieved using the latest technology of the internet and on-line digital platforms.

Our future role

The unique and ongoing partnership with the legal profession demonstrated by the Law Society will continue to grow. A rapidly changing economy combined with the new areas of law and regulation will require leadership, assistance and guidance for the legal profession.

The Law Society will meet these future needs by constant improvement to the delivery of professional support services, using new digital technologies combined with traditional methods of support provided by our online guidance, advisory services and Continuing Professional Development programs.

The 2023 Annual Report from the Professional Standards Department of the NSW Law Society is presented for your reading to inform you of and demonstrate the unique ongoing professional role of the Law Society in maintaining professional standards.

Cassandra Banks
President



THE PROFESSIONAL STANDARDS DEPARTMENT

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

Key activities

Management

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

Investigations

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

Litigation

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

Costs

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

Ethics

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

Regulatory compliance

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

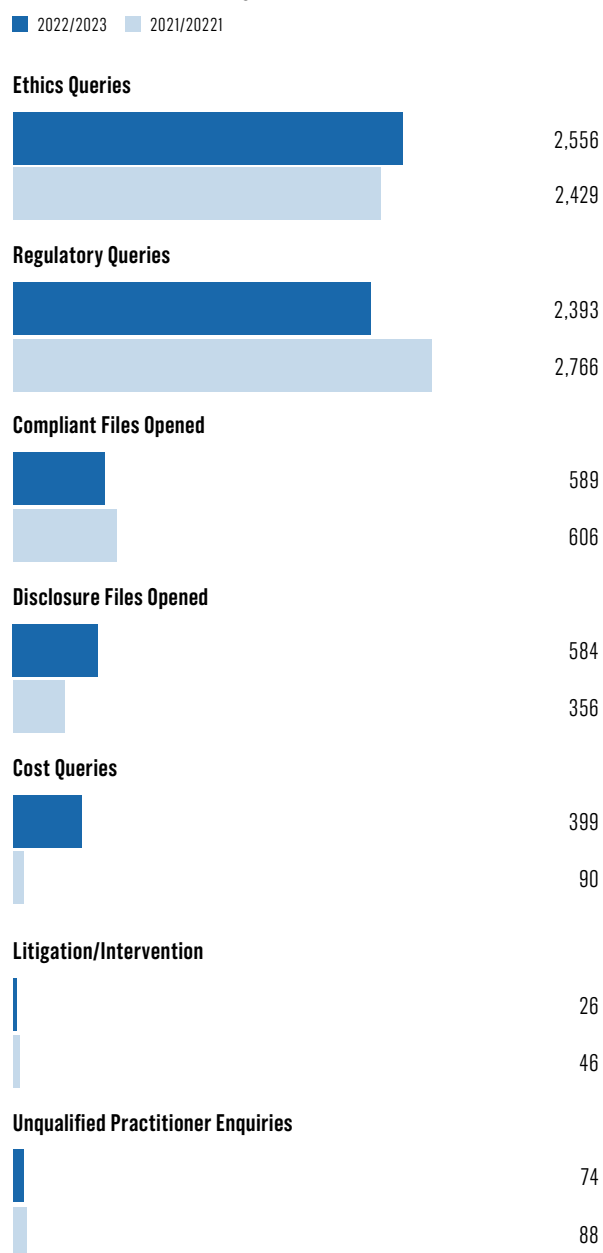
Administration

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

Disclosure

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

Work undertaken by Professional Standards





COMPLAINTS

The complaints process

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

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

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

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

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

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

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

Referrals from the Legal Services Commissioner

In 2022/2023:

- The Commissioner received a total of 2,842 written complaints about solicitors, a decrease of 2% from the previous reporting period.
- Professional Standards was referred a total of 589 complaints, 6 of which were complaints made by the Law Society. This represents a 2.88% decrease on the previous year.
- 20 findings of unsatisfactory professional conduct were made by the PCC and 10 matters were referred to NCAT for determination.
- 660 matters were closed in total, with 502 complaints closed by PCC during the year.
- At 30 June 2023, 627 Chapter 5 complaints remained open.

Complaints made by the Law Society

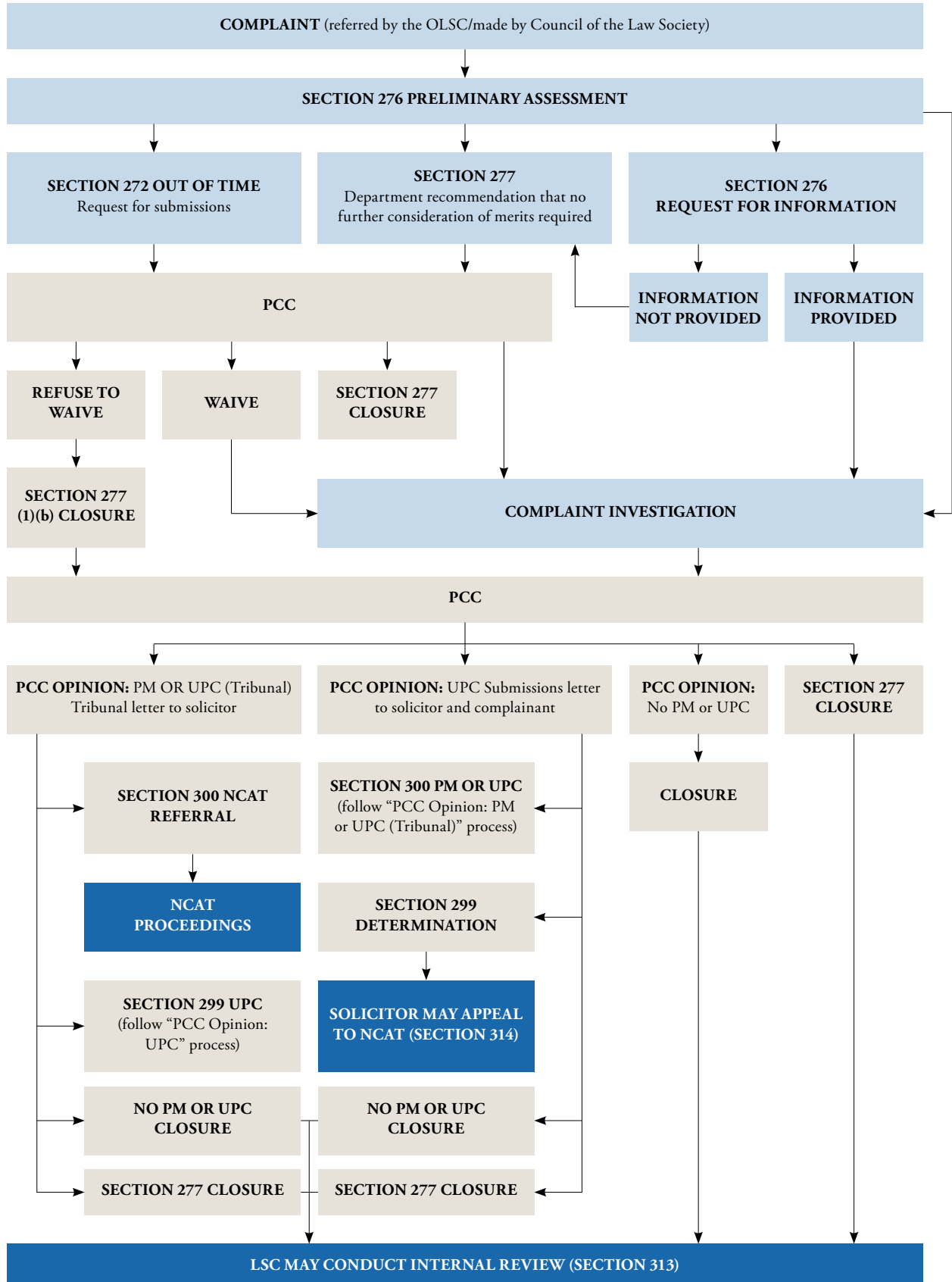
As noted above, the Law Society may, pursuant to section 266 of the Uniform Law, make its own complaints to the Commissioner about the conduct of solicitors.

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

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

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

Complaints investigation process



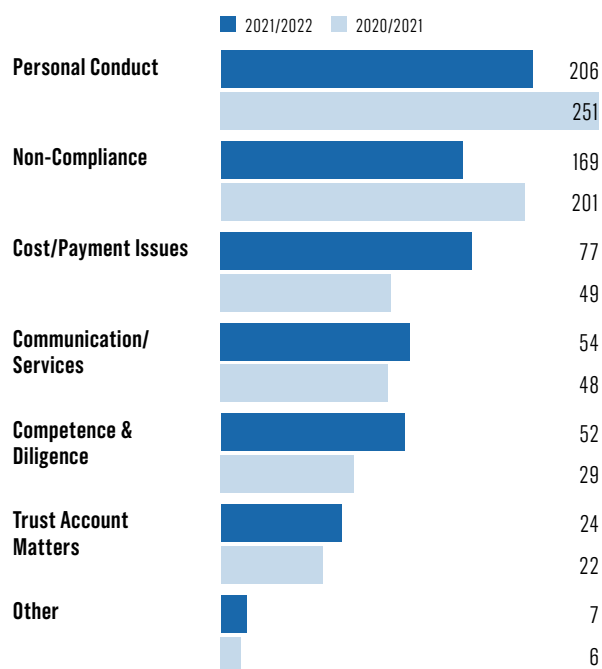
CATEGORIES OF COMPLAINTS

The following section provides a snapshot summary of the type and nature of complaints opened by Professional Standards in 2022/2023.

Conduct most complained about

In 2022/2023:

- “Personal Conduct” (including, for example, unethical conduct, misleading behaviour, borrowing from client and negligence) was the major issue complained about, making up 206 of the total complaints.
- “Non-compliance” issues (including, for example, the failure to comply with an undertaking and failing to comply with the legal profession legislation) accounted for 169 of the total complaints.
- “Costs/Payment Issues” (including, for example, a failure to pay a third party, overcharging, a failure to provide a detailed account or costs disclosure) accounted for 77 of the total complaints.
- “Communication/Services” issues (including, for example, acting contrary to instructions, failing to carry out instructions and no communication) accounted for 54 of the total complaints.
- “Competence and diligence” issues (including, for example gross negligence, failure to meet deadlines, delay, failure to transfer files) accounted for 52 of the total complaints.
- “Trust Account Matters” (including, for example, a breach of the legal profession legislation in relation to trust money, failure to account and misappropriation) accounted for 24 of the total complaints.



AREAS OF LAW WITH THE MOST COMPLAINTS

Corporate / Commercial	141	Debts / Insolvency	14
Conveyancing / Real Property	100	Employment / Industrial Law	10
No Area of Law	77	Personal Injury	7
Criminal Law	63	Wills & Estates Law	4
Commercial Litigation	51	Civil Litigation	3
Administrative Law	43	Immigration Law	2
Family Law	37	Other	1
Banking / Finance	18	Environmental Law	1
Litigation General	17		

Complaints by solicitor type

In 2022/2023:

- 350 complaints were made against principals of a law practice (comprising 59.42% of the complaints made).
- 113 complaints were made against employees of a law practice (comprising 19.18% of the complaints made).
- From a geographical perspective, 48.38% of complaints made related to solicitors practising in suburban Sydney, 28.18% related to solicitors practising in Sydney’s CBD, 1.01% related to interstate solicitors and 18.16% were made against solicitors practising in rural New South Wales.
- 26.82% of complaints concerned female solicitors and, by comparison, 63.49% of complaints were made against male solicitors.

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

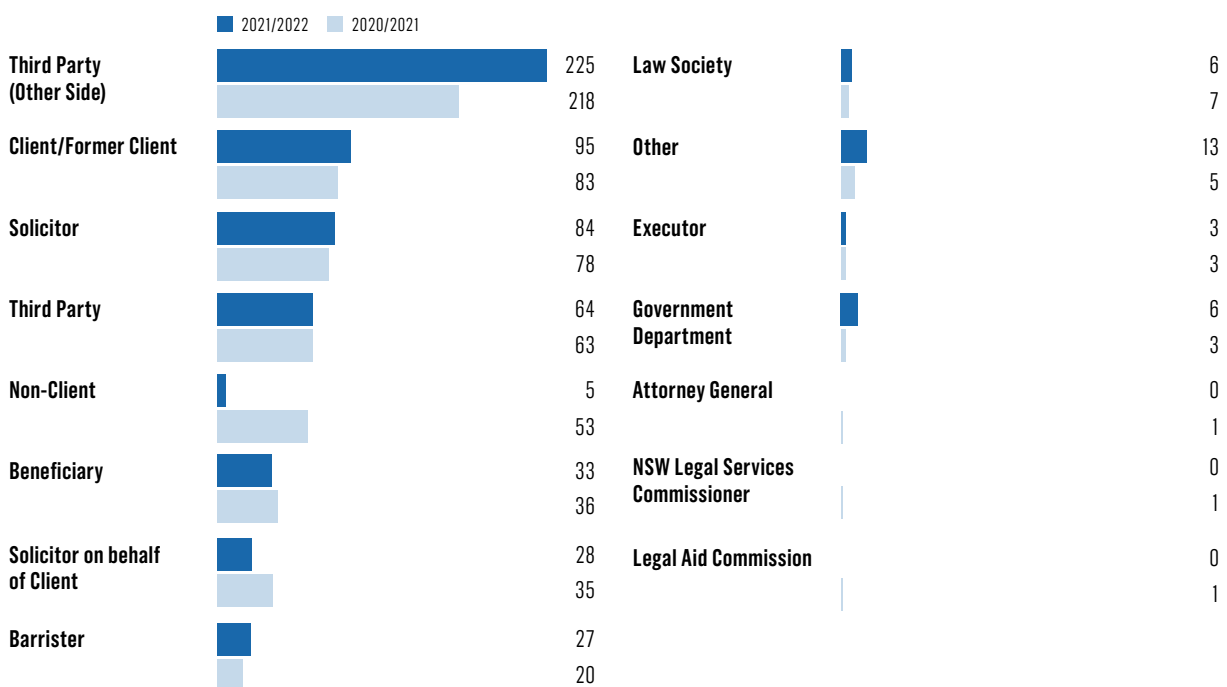


Categories of complainants

In 2022/2023:

- The highest group of complaints were made by the opposing side of the client(s) or former client(s), which accounted for 38.20% of the total complaints.
- Complaints made by the client(s) or former client(s) of a solicitor or law practice accounted for 16.12% of the total complaints.

- Complaints made by a solicitor accounted for 14.26% of the total complaints.
- Complaints made by barristers accounted for 4.58% of the total complaints. These complaints often related to the non-payment of their outstanding fees.



Investigation and finalisation of complaints

In 2022/2023:

- Professional Standards closed 660 complaints.
- 68.78% were closed on the basis that they required no further investigation
- 4.84% of complaints were closed as “misconceived/lacking in substance”.
- 5.30% of complaints were withdrawn.
- 2.12% of complaints were referred back to the OLSC.

COMPLAINTS CLOSED UNDER THE UNIFORM LAW		
Code	Outcome	Number
209	No Further Investigation Required Except Cm – S277(1)(H)	454
200	Complaint Withdrawn – S273(1)	35
201	Misconceived/Lacking In Substance – S277(1)(A)	32
206	Complaint Better Dealt With By Law Enforcement/Investigatory Body – S277(1)(E)	29
202	Time Limit Not Waived Under S272(1) – S277(1)(B)	17
205	Complaint Already Has Been Investigated –S277(1)(D)	17
204	Failure/Inadequate Response To Request For Info – S277(1)(C)	17
224	D Reprimand – S299(1)(B)	15
235	Referred Back to the Office of the Legal Services Commissioner	14
230	D Initiate Tribunal Proceedings – S300(1)	10
211	Public Interest Closure – S277(1)(J)	9
223	D Caution – S299(1)(A)	4
203	Time Limit Re Costs Dispute Not Waived Under S272(2) – S277(1)(B)	2
208	Complaint Subject to Civil Proceedings - S277(1)(G)	2
238	Closed Enquiry	1
210	No Power to Investigate Complaint – S277(1)(I)	1
227	D Order Requiring Training, Education, Counselling Or Supervision – S299(1)(E)	1

Decisions of the Professional Conduct Committee

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

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

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

Following its consideration of a complaint, the PCC may:

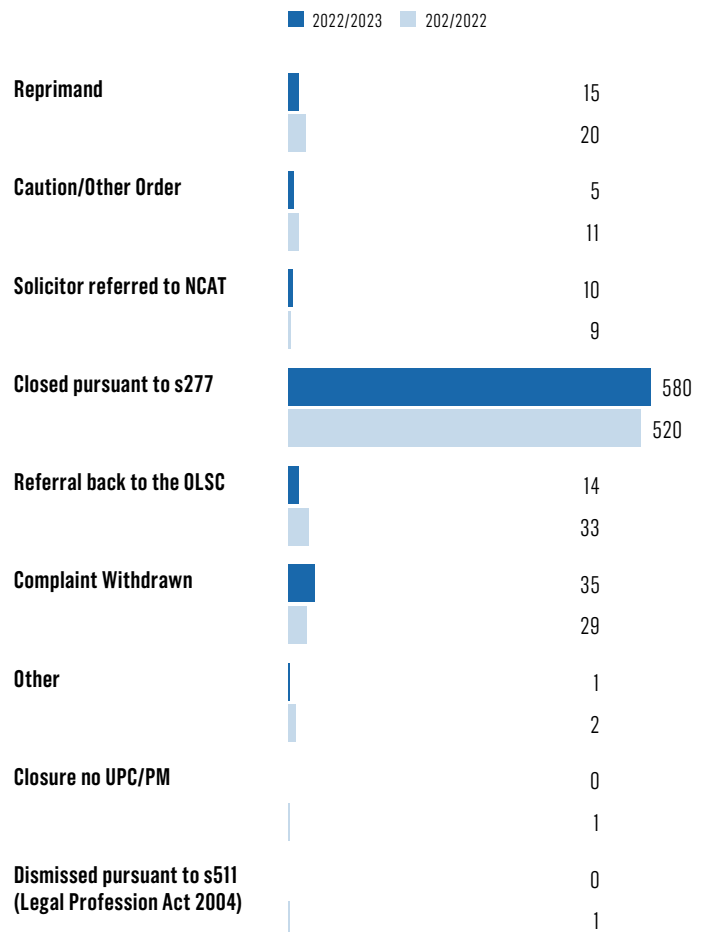
- Close the complaint.
- Find that the solicitor has engaged in unsatisfactory professional conduct and
 - order that the solicitor:
 - be cautioned;
 - be reprimanded;
 - apologise to the complainant;
 - re-do the work that is the subject of the complaint at no cost or waive or reduce the fees for the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

In 2022/2023:

- Of the 660 matters finalised by Professional Standards, 502 complaints were closed by PCC.
- Of the complaints closed by the PCC:
 - 4 cautions and 15 reprimands were consequently ordered by the PCC.
 - 10 matters were referred to NCAT for the commencement of disciplinary proceedings.
 - 72% were closed for one or more of the grounds provided under section 277 of the Uniform Law, including that the complaint was misconceived or lacking in substance (277(1)(a)); the complainant had not responded, or responded inadequately to a request for further information (277(1)(c)); the subject matter of the complaint had already been investigated (277(1)(d)); or that it was otherwise in the public interest to close the complaint (for example, in circumstances where the solicitor’s name may already have been removed from the roll) (277(1)(j)).

In September 2022, Council delegated the power to deal with complaints to the Law Society’s Director, Legal Regulation. In practice the Director only closes complaints under specified grounds in section 277. During the year the Director closed 109 matters under section 277.

Complaint outcomes



Complaints management

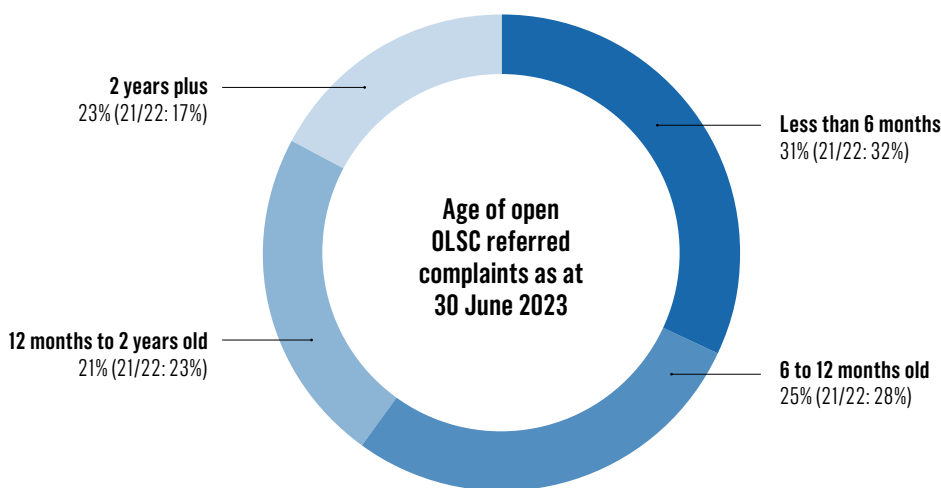
The staff practices and procedures of Professional Standards are regularly reviewed and updated to ensure complaints are handled as efficiently and expeditiously as possible.

During the period there has been a substantial improvement in closure times.

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

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

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



CLOSURE TIMES FOR COMPLAINTS

Closure time within	2023	2022	KPI
2 years	81%	79%	95%
12 months	72%	59%	70%
6 months	39%	34%	30%

Reviews by the New South Wales Legal Services Commissioner

The decisions and determinations of the Council and its delegates in relation to complaints are subject to review. The avenue of review that may be available under the legal profession legislation will depend upon the type of decision or determination made.

For example, in relation to a complaint which has been closed by the PCC under section 277 of the Uniform Law, an application for review must be made to the Commissioner within 30 days of the date of notice of the decision.

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

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

In 2022/2023, the Commissioner received 174 requests for reviews. There were a total of 32 reviews completed in the last financial year, and 37 were received in 2020/2021.

LITIGATION AND INTERVENTION

New South Wales Civil and Administrative Tribunal

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

Proceedings are commenced in NCAT, pursuant to section 300(1) of the Uniform Law, on behalf of the Council by

the filing of an Application for Disciplinary Findings and Orders (Application). Applications must be filed within 6 months of the date of the PCC's decision.

Many of the matters referred to NCAT are complex and quite often involve multiple issues of alleged misconduct. The table below labelled 'Number and type of proceedings instituted at NCAT' sets out the types of conduct that NCAT considered in 2022/2023 in disciplinary proceedings that the Council commenced and the orders that it made in those proceedings.

NCAT Orders for reprimands, fines or removal from the Roll – FY2023 (as at 30 June 2023)

The table below indicates the trend of disciplinary outcomes, namely, reprimands, fines, and removals from the roll or recommendations for removal from the Roll, issued by NCAT over each financial year.

YEAR	REPRIMAND	FINE	REMOVAL / RECOMMENDATION FOR REMOVAL FROM THE ROLL
2022/2023	2	1	0
2021/2022	6	1	1
2020/2021	9	4	1
2019/2020	4	2	1
2018/2019	23	19	8
2017/2018	13	7	8
2016/2017	8	5	11
2015/2016	15	3	9

NCAT – Disciplinary proceedings

In 2022/2023:

- The Council commenced 10 proceedings in respect of 8 respondent solicitors in NCAT pursuant to section 300(1) of the Uniform Law or section 527(2) of the *Legal Profession Act 2004* (NSW).
- The Tribunal published decisions in relation to 2 disciplinary proceedings that the Council had commenced in NCAT, in a previous period, pursuant to section 300(1) of the Uniform Law:
 - In both proceedings the Tribunal found that the respondent solicitor had engaged in professional misconduct, and made disciplinary orders on the basis of that finding.
 - In one of those proceedings the Tribunal made orders issuing the respondent solicitor with a reprimand, requiring him to pay a fine, undertake further education and pay the Law Society’s costs.
 - In the other proceedings the Tribunal made orders issuing the respondent solicitor with a reprimand and requiring him to pay the Law Society’s costs.

Number and type of proceedings instituted at NCAT

Name of solicitor	Conduct	Finding/s	Orders made	Date of orders
Albert Judah	The respondent solicitor breached conditions imposed on his practising certificate.	Professional misconduct	<ul style="list-style-type: none"> • Reprimand • Costs 	11 August 2022
Nawar Alkhair	The respondent solicitor disclosed confidential information about a loan agreement, in which his client was involved, to a solicitor for parties opposing the client in Supreme Court proceedings.	Professional misconduct	<ul style="list-style-type: none"> • Reprimand • Fine • Education course • Costs 	5 October 2022

Section 314 (appeal) proceedings

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

In 2022/2023:

- 4 matters were commenced in NCAT against the Council pursuant to section 314 of the Uniform Law. As at 30 June 2023:
 - 1 of those matters was discontinued by the Applicant.
 - 1 of those matters has been heard by NCAT and the decision has yet to be published.
 - 2 of those matters have not yet been heard by NCAT.

The Tribunal published decisions in relation to 2 proceedings which were commenced by the practitioner against the Law Society Council in a previous period: *Hagan v Council of the Law Society of New South Wales* [2022] NSWCATOD 76. In the decision published 7 July 2022, the PCC found the practitioner had engaged in unsatisfactory professional conduct, in respect to the following conduct:

- Engaged in unethical conduct by sending inaccurate correspondence to the complainant's solicitor (described in the Tribunal's reasons for decision as the "Correspondence Conduct"); and
- Distributed the proceeds of an insurance policy from his trust account contrary to section 138 of the Uniform Law (described in the Tribunal's reasons for decision as the "Trust Disbursement Conduct").

The PCC made orders cautioning the practitioner and requiring him to provide a written apology to the complainant.

The Tribunal varied the PCC's resolutions, in part, finding the practitioner had engaged in unsatisfactory professional conduct in respect of the Correspondence Conduct only. The Tribunal affirmed the balance of the PCC's findings and orders.

Quinones v Council of the Law Society of New South Wales [2023] NSWCATOD 43 – Decision published 3 April 2023: The PCC found the practitioner had engaged in unsatisfactory professional conduct and made orders reprimanding the practitioner, requiring her to complete a legal ethics course and requiring her to provide an apology to the complainant.

The Tribunal upheld the PCC's finding that the

practitioner had engaged in unsatisfactory professional conduct and varied the PCC's orders in part, holding that the practitioner was no longer required to provide an apology to the complainant. The Tribunal affirmed, in substance, the balance of the PCC's orders.

Supreme Court and Court of Appeal proceedings

In 2022/2023 the New South Wales Court of Appeal handed down the following decisions in proceedings to which the Council was a party:

1. *Terepo v Council of the Law Society of New South Wales* [2022] NSWCA 210 – Decision published 25 October 2022: NCAT had published a decision in which it found the practitioner had engaged in professional misconduct and unsatisfactory professional conduct. NCAT had also published a separate decision in which it made an order recommending that the practitioner's name be removed from the Roll. The practitioner subsequently appealed the two decisions of the Tribunal, submitting that the Tribunal exceeded its jurisdiction. The Law Society Council accepted this submission and, consequently, the parties filed agreed orders with the Court of Appeal designed to dispose of both proceedings. The Court of Appeal published a decision and made orders which, in substance, were the same as the agreed orders.
2. *Council of the Law Society of New South Wales v Green* [2022] NSWCA 257 – Decision published 14 December 2022: The Court of Appeal made a declaration that the practitioner is not a fit and proper person to remain on the Roll and made orders removing the practitioner's name from the Roll and requiring her to pay the Law Society's costs.

Other matters

In 2022/2023 the Tribunal handed down the following decision in proceedings to which the Council was a party:

Buckley v Council of the Law Society of New South Wales (No 2) [2022] NSWCATOD 94 – Decision published 25 August 2022: The practitioner commenced proceedings in NCAT to seek a review of the PCC's decision to find him guilty of unsatisfactory professional conduct. During these proceedings, NCAT issued the Law Society with a Summons at the practitioner's request. The Law Society applied for an order setting the Summons aside ("Summons set aside application") and NCAT made that order. The Law Society then sought an order for its costs with respect to the Summons set aside application. The Tribunal dismissed the Law Society's application for costs.

Unqualified legal practice

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

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

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

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

In 2022/23:

- 74 enquiries about unqualified practice were reviewed, a decrease from 88 enquiries reviewed in the previous reporting period.
- 47 enquiries about unqualified practice were closed.
- The Law Society commenced a prosecution against an individual in the Local Court for 1 alleged offence under section 10(1) of the Uniform Law and 5 alleged offences under section 11(1) of the Uniform Law. The person pleaded guilty to the offences. The Local Court convicted him of the offences and imposed a sentence requiring the person to pay fines and to comply with a community corrections order.
- The Local Court found a person against whom the Law Society had commenced a prosecution in a previous period for 3 alleged offences under section 10(1) and 5 alleged offences under section 11(1) of the Uniform Law guilty of those offences and, on 12 July 2023, imposed a sentence requiring the person to pay fines and to comply with community corrections orders.

Disqualification of individuals

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

Grounds for disqualification include the following circumstances:

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

In 2022/2023:

- The Council commenced 1 set of proceedings in NCAT pursuant to section 119 of the Uniform Law.
- The Tribunal did not publish any decision making a disqualification order pursuant to section 119 of the Uniform Law in proceedings that the Council had commenced in a previous period.

External intervention

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

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

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

Managers

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

In 2022/2023, the Council appointed a total of 20 managers and re-appointed 2 managers. The Council re-appointed 1 manager twice.

During the same year, the Director, Legal Regulation, acting as the Council's delegate, re-appointed 5 managers.

Supervisors

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

In 2022/2023, the Council appointed a total of 5 supervisors.

Receivers

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

In 2022/2023, the Court made no appointments of receivers.

Investigators

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

In 2022/2023, the Council made no appointments of external investigators.



DISCLOSURE, COMPLIANCE AND FITNESS MATTERS

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

Relevantly, these are:

1. **“Automatic show cause events”** – Part 3.5 of the Uniform Law sets out certain “automatic show cause events” that solicitors must disclose to the Law Society. Such “automatic show cause events” are defined in section 86 of the Uniform Law and include a bankruptcy event, conviction for a serious offence (indictable offences) or a tax offence.
2. **Matters requiring to be disclosed under section 51 of the Uniform Law** – Such matters include a charge or conviction for a serious offence, a tax offence or an offence specified in rule 15 of the Legal Profession Uniform General Rules 2015 (NSW (Rules), a bankruptcy related event or disciplinary proceedings brought against a solicitor in a foreign country.
3. **Matters referred to in rule 13 of the Rules** – At the time a solicitor renews or applies for a practising certificate, consideration must be given to the disclosure of each of the matters referred to in rule 13(1) of the Rules for the Law Society to determine whether or not the solicitor is a fit and proper to hold a practising certificate.

Applicants for a practising certificate are also required to disclose certain preadmission events such as convictions and other incidents affecting their fitness to practise.

The Uniform Law sets out various processes for considering these disclosures.

Compliance matters

Compliance files are opened by the Department where:

- NCAT orders that a solicitor take certain steps (such as complete education or pay a fine).
- The PCC makes certain orders that a solicitor do certain things (such as provide an apology to a complainant, complete education or pay a fine).
- Conditions are placed on a solicitor’s practising certificate that they need to comply with (e.g. further supervision, medical or financial reporting, further education). These can be imposed either by Council or a delegate, or agreed to by the solicitor voluntarily.

Other fitness issues

Other matters may be drawn to the attention of the Law Society that raise questions about whether a person is fit and proper to hold a practising certificate. These include:

- Matters referred by the Court;
- Matters referred by another regulatory body or government department;
- Notifications under section 154 of the Uniform Law of a trust account irregularity;
- Matters from other parts of the Law Society, for example the Licensing Department.

These matters are assessed by Professional Standards and if appropriate recommendations are made to Council, the PCC or the Disclosure Committee.

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

Disclosure Committee

The Disclosure Committee, under delegation of the Council, deals with certain matters that solicitors are required to disclose to the Law Society. The Disclosure Committee does not have the power to make a determination to cancel or suspend a practising certificate, or to refuse an application for a practising certificate. Any such determination is reserved for the Council. The Disclosure Committee can, however, impose conditions on practising certificates.

In 2022/2023, there were 16 members of the Disclosure Committee, comprising 3 Councilors of the Law Society, 9 solicitors, 1 Australian Lawyer and 3 lay members. The Disclosure Committee generally meets monthly to make decisions on the matters before it.

Disclosures received by the Law Society

This year, this report is reporting separately on the disclosures made by current solicitors from new applicants for a practising certificate.

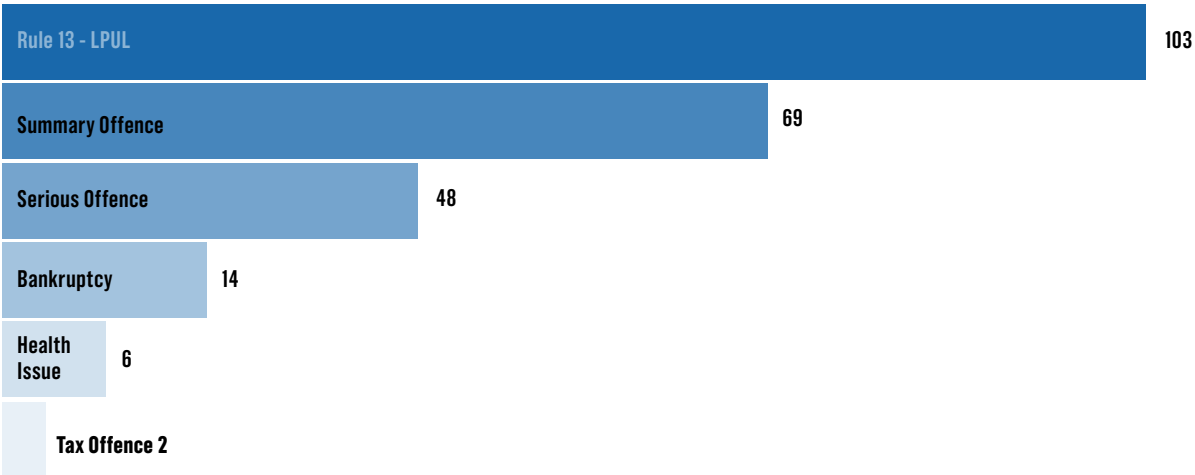
Conditions ... placed on a solicitor's practising certificate that they need to comply with (e.g. further supervision, medical or financial reporting, further education) ... can be imposed either by Council or a delegate, or agreed to by the solicitor voluntarily.

In 2022/2023, for current practising certificate holders, 229 solicitors disclosed 242 matters. Of the disclosures received:

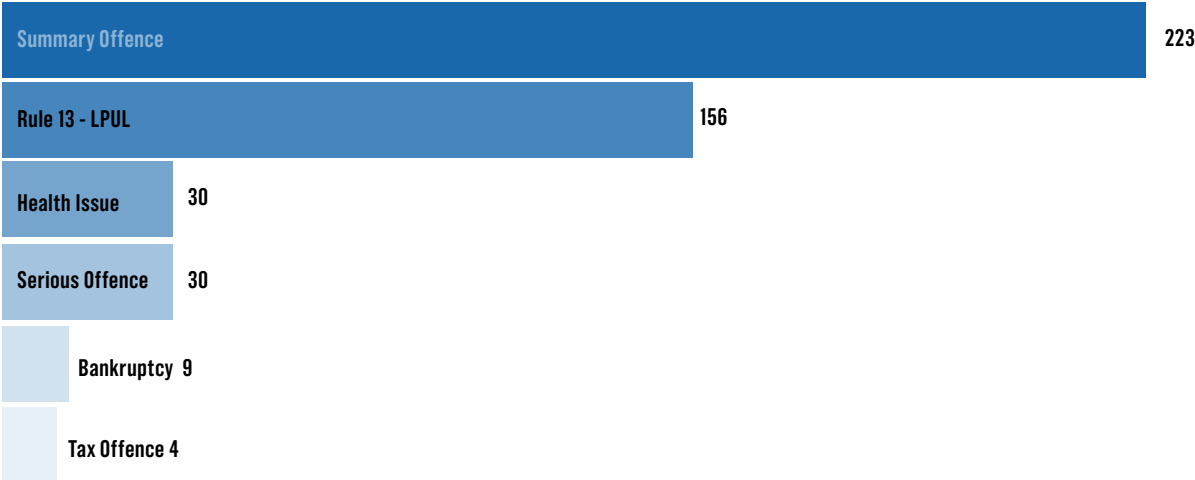
- 48 involved serious offences, which may include: aggravated break and enter, affray, larceny, destroying and damaging property, indecent assault, common assault, stalking and intimidating, assaulting police and resisting/ hindering arrest, breaching domestic apprehended violence orders, recklessly dealing with the proceeds of crime, accessory after the fact to murder, child pornography offences, obtaining financial advantage by deception, fraud, conspiracy to defraud, breaching security regulation and participating in criminal group.
- 69 involved Summary Offences, consisting predominantly of: driving offences (such as drink-driving, negligent driving, driving without a licence, traffic infringements and parking infringements), possession of prohibited drugs, academic misconduct, Centrelink overpayments, disorderly behaviour, failure to attend jury duty, failure to vote, failure to leave licensed premises, drinking in public, public nuisance, jaywalking, possessing a knife in public, failure to submit to breath test, behaving in an offensive manner, breaching biotechnology regulations, breaching customs regulations and using false identification.
- 14 disclosures were notifications of Bankruptcy.
- 2 related to tax offences.
- 6 related to health issues of the practitioner.
- There were 103 other matters under Rule 13.

For new applicants, 358 disclosed 452 matters. These ranged from serious offences to minor matters such as Centrelink overpayments, parking fines and minor traffic offences. The numbers for the various offences are set out in the table below.

DISCLOSURES MADE TO THE LAW SOCIETY – SOLICITORS WITH PRACTISING CERTIFICATES



DISCLOSURES MADE TO THE LAW SOCIETY – NEW APPLICANT



Compliance matters

During the year, the Department opened 47 compliance files, and 47 matters were closed. In general, most matters close because the solicitor has complied with their obligations. However, a small number result in further regulatory action being taken against the solicitor for non-compliance.

Other fitness matters considered by the Department

During the year, the Department opened 162 files to deal with fitness matters raised with it. The table below shows the source of these matters.

Fitness matter	Number
External referral	54
Licensing referral	40
Trust referral	40
Other	28

Regulatory actions

The Council and its delegates can make a range of decisions in dealing with disclosure and fitness matters. The most serious actions taken by such decisions involve refusal, suspension or cancellation of a practising certificate, and such decisions can only be made by Council. Other actions that may be taken include:

- Imposing conditions on a practising certificate.
- Appointing a manager or supervisor.
- Issuing warnings or advisory letters.
- Making complaints to the OLSC.

The overwhelming majority of matters result in no further action. This is because most matters disclosed or identified do not raise an issue relevant to fitness to practice, or because another event has occurred (e.g. charges have been withdrawn).

In 2022/2023, the significant regulatory actions listed in the table below were taken by Council to respond to disclosures and fitness matters:

Action taken	Number
PC cancellation	2
PC suspension	11
PC refusal	7
Conditions imposed	6
Conditions by consent	12
Director's advisory letter	10
Manager appointed – no conduct	9
Director's warning letter	3
Complaint made	6
Manager appointed – conduct	2
Supervisor appointed – conduct	2



PROFESSIONAL SUPPORT ETHICS UNIT

The Ethics Unit of the PSU (**Ethics Unit**) and the Ethics Committee provide professional assistance and specialist services to the legal profession and help on a wide range of topics.

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

Overview

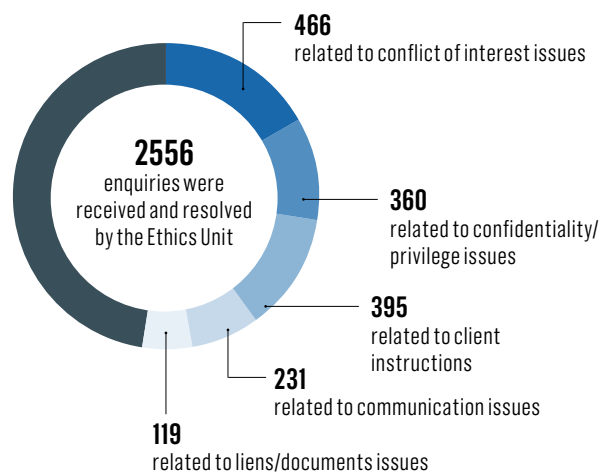
During 2022/2023 the legal profession relied heavily upon the services of the Ethics Unit for timely and practical information and guidance to assist the profession to maintain ethical practices and avoid inappropriate conduct.

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

The Ethics Unit received and resolved 2,556 questions arising from 2,513 individual enquiries, which reflects the ongoing need for the services provided. The number of enquiries remains steady from the previous reporting period. Of these 2,556 questions:

- 466 (18.23%) related to conflict of interest issues
- 395 (15.49%) related to client instructions
- 360 (14.08%) related to confidentiality/privilege issues
- 231 (9.04%) related to communication issues
- 119 (4.66%) related to issues with liens/documents.

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



Additional practice guidelines and answers to frequently asked questions were provided on:

- Witnessing and certifying documents
- Entering into agreements with an opponent to not represent other clients against that same opponent
- Ethical issues that could arise for solicitors who are also local government councilors
- What solicitors can do to help a colleague who is struggling
- Inadvertent disclosures
- Factors to consider when dealing with file transfers.

In addition to the above resources, the Ethics Unit contributed to the Law Society's *Monday Briefs* member newsletter, as well as maintaining a regular ethics column in the *Law Society Journal* and the *Ethics and Standards Quarterly*.

The Ethics Committee and its functions

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

The members of the Ethics Committee provide a diverse pool of practical skills, drawing on its membership of practitioners from government departments and private practice (large, medium and small) across a range of locations – city, suburban and rural. This provides a broad and comprehensive base of experience of specialist expert guidance on ethical issues for solicitors.

There are currently 17 members of the legal profession on the Committee.

The Ethics Committee is supported by the Ethics department (part of the PSU of the Law Society).

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

This year, with the support of the Ethics Unit, the Ethics Committee provided updated guidance for the legal profession on frequently asked questions relating to:

Witnessing or certifying documents

Entering into agreements with an opponent to not represent other clients against that same opponent

Ethical issues that might arise for solicitors who are local government councillors

- What solicitors can do to help a colleague who is struggling
- Inadvertent disclosures
- Factors to consider when dealing with file transfers.

The year in review – service and guidance

The 2022/2023 year continued to present interesting ethical issues for the legal profession. Changed working conditions as well as the emergence and growth of artificial intelligence presented unique challenges to maintaining the provision of legal services to the public.

The education program has been an ongoing and essential component of the services provided to the legal profession. This financial year, 128 continuing professional development sessions were provided to assist lawyers meet their annual mandatory ethics learning requirement and deepen their understanding of this topic of central importance to the legal profession.

ETHICS ENQUIRIES, 2022–2023	
Type of enquiry	Number of enquiries responded to
Miscellaneous	612
Conflict of interest	466
Client instructions	396
Confidentiality/privilege	361
Communications	231
Liens/documents	120
Costs	87
Client capacity	61
Termination of retainer	59
Trust monies	51
Improper instructions	43
Disclosure	15
Unqualified persons	11
Undertakings	10
Advertising	9
Misleading	8
Solicitor leaving firm, contacting clients	7
Solicitor material witness	3



PROFESSIONAL SUPPORT LEGAL COSTS UNIT

The Legal Costs Unit of the PSU (Costs Unit) provides specialist guidance and education sessions on costs to all solicitors in New South Wales, regardless of their membership status, as a means of ensuring their compliance with the legislation. It promotes this service in the *Law Society Journal* and the Law Society Members' Services Guide and in regular articles in PSD's new publication, the *Ethics and Standards Quarterly*.

This last financial year is the first year in which the Costs Unit has been fully staffed since mid-2021. In conjunction with the Costs Committee, the Costs Unit has also been reviewing and promoting the Law Society's updated Costs Guidebook.

This year, the Costs Unit handled 290 enquiries and 399 questions. The most common problem faced by solicitors requiring assistance related to proper costs disclosure as required under the Uniform Law. Enquiries relating to costs disclosure amounted to 28% of all enquiries, followed by costs agreements (18%) and billing (17%).

Education

The Costs Unit has continued to provide topical CPD seminars in the areas most frequently enquired about (namely, costs disclosure, agreements, assessment and recovery). The Costs Unit has also been working closely with the Costs Committee and Regulatory Policy team leader on the implications of several recent cases, including *Bevan v Bingham* [2023] NSWSC 19, *Bevan v Bingham* [2023] NSWSC 123 and *Ramsay v Gatland* [2022] NSWSC 1514.

This year, the Costs Unit has also been involved in regulatory policy issues, including providing feedback on:

- The Legal Service Council's consultation paper on conditional costs agreements
- The Legal Service Council's review of costs disclosure thresholds
- The proposed re-draft of the *Legal Profession Uniform Law Application Regulation 2015* (NSW), which is due to be reissued
- The Costs Assessment Rules Committee Guideline.

In the past financial year the Costs Unit resumed providing educational seminars and workshops face to face as well as online and visited a number of regional areas. It also provided 13 seminars specific to costs law.

Other work

The Costs Unit has a key role in providing legal and compliance information in relation to costs to the legal profession.

This year, the Costs Unit conducted research and provided seminars in person, online and on-demand interactive seminars on:

- The Uniform Law framework, including the definition of legal costs, costs disclosure, costs agreements and billing under the Uniform Law
- Security on costs, costs disputes and resolution of disputes through negotiation, costs assessments and/or court action
- Determinations by the Commissioner and compensation orders under the Uniform Law
- Updates on and analysis of recent cases on costs.



The Costs Committee

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

The Committee:

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

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

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

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

Key Cost enquiry topics for 2022/2023

Topic	Number of enquiries
Costs disclosure	112
Costs recovery	72
Costs billing	69
Costs assessment	31
Costs Trust Account	21
File transfer	11
Regulated costs	10
Liens	9
Party-party costs	3
Other	1



PROFESSIONAL SUPPORT REGULATORY COMPLIANCE

The Regulatory Compliance Unit provides guidance to solicitors and other stakeholders on compliance issues related to the provision of legal services under the Uniform Law. The Regulatory Compliance Unit also provides complimentary continuing professional development sessions and creates educational resources throughout the year for practitioners.

Overview

Over the course of 2022/2023, the Regulatory Compliance Unit handled and resolved 2,393 questions arising from 1,548 separate enquiries.

The most common identifiable enquiry topics concerned:

- Practising certificates (17.47%)
- Practice management (16.88%)
- Establishment of an incorporated legal practice (ILP)
- Trust accounts (4.05%)
- Matters relating to interstate and foreign legal practice (3.92%).

Highlights of 2022/2023

Alternative business structure proposal enquiries

This financial year, there was an increase in the number of enquiries related to alternative business structure proposals for the Regulatory Compliance Unit to consider and provide guidance on. These proposals ranged from complex inquiries regarding business structures permitted under the Uniform Law to new and innovative ways to connect legal practitioners with potential clients.

The Regulatory Compliance Unit often liaises with other departments within the Law Society and, where necessary, seeks the views of designated local regulatory authorities from other Uniform Law jurisdictions to provide thorough and consistent regulatory guidance.

Educational resources

This year, the Regulatory Compliance Unit prepared a high volume of educational resources to support practitioners in their obligations under the Uniform Law, particularly in the management of their legal practices.

The Regulatory Compliance Unit often liaises with other departments within the Law Society and, where necessary, seeks the views of designated local regulatory authorities from other Uniform Law jurisdictions to provide thorough and consistent regulatory guidance.

Educational resources produced by the Regulatory Compliance Unit often reflect emerging issues and challenges faced by practitioners. This year, guidance material was created on the following topics:

- Witnessing and certifying documents
- Succession planning in legal practice
- Data breach and the Privacy Act
- Practising entitlements of foreign lawyers
- Setting up a virtual law practice
- Trust account scams
- What a lawyer can and can't do at each stage of their career
- Changes affecting solicitors who providing immigration assistance
- Solicitor and law practice marketing.

Supporting solicitors' Continuing Professional Development

The Regulatory Compliance Unit provided 20 CPD seminars for practitioners in both metropolitan and regional NSW. Sessions were delivered face to face and online, depending on the needs of the audience.

Collaboration on licensing issues

The Regulatory Compliance Unit continued to work closely with Registry staff and licensing solicitors on regulatory issues, including:

- Registration of business names
- ILPs
- Interstate practice, including interstate practice by ILPs
- Supervised legal practice
- Supervision (including remote supervision)
- Pro bono practice
- Registration of foreign lawyers
- Conditional Admission of foreign lawyers.

REGULATORY COMPLIANCE ENQUIRIES	
Enquiry type	Number of enquiries
Miscellaneous	570
Practising certificate	418
Practice management	404
Establishment of ILP	143
Trust accounts	97
Interstate and foreign legal	94
Business development	91
Employment	87
Law practice demands	84
Closing/selling a business	64
In-house practice	43
Show cause	43
Establishment of a non-ILP	39
Transfer of a practice	36
Consultants	24
Establishment of a ULP	19
Letterheads/Business names	19
Unqualified practitioners	18

Educational resources produced by the Regulatory Compliance Unit often reflect emerging issues and challenges faced by practitioners.

APPENDIX

Table 1 – Chapter 5 complaints referred by OLSC, by type of complaint, 2013–2023

DISCIPLINARY MATTERS	13	14	15	16	17	18	19	20	21	22	23
Personal Conduct	195	165	226	284	202	260	228	228	236	272	250
Unethical Conduct	118	71	77	113	122	91	155	106	102	136	100
Negligence	48	29	24	20	44	23	31	45	17	29	52
Threatening Behaviour	7	9	7	4	8	10	10	15	42	39	38
Conflict of Interest	22	16	16	12	31	18	27	18	22	32	22
Misleading	29	32	23	58	45	35	24	18	19	10	16
False Swearing of Documents	7	11	3	2	13	3	3	6	12	6	8
Communicating with a Client of Another Solicitor	4	10	8	9	7	7	2	5	12	10	7
Breach of Confidentiality	7	4	2	5	6	5	2	3	6	4	4
Borrowing from Client	6	4	0	1	2	1	0	1	1	3	1
Failure to Transfer Documents	4	6	3	2	4	6	4	6	3	3	1
Undue Pressure	1	3	0	0	1	3	2	3	0	0	1
Failure to Assist Law Society	0	0	2	0	1	0	0	2	0	0	0
Cost / Payment Issues	62	52	48	59	68	49	48	76	66	49	77
Failure to Pay Third Party	42	35	29	43	34	33	24	21	47	36	55
Failure to Provide a Detailed Account	0	2	1	0	5	1	1	9	7	5	17
Overcharging	9	8	5	8	17	11	1	2	4	7	5
No Costs Disclosure	6	6	12	6	8	3	19	3	3	0	0
Transfer Costs Without Authority	5	1	1	2	4	1	3	2	1	1	0
Liens	0	0	0	0	0	0	0	2	2	0	0
Unethical Conduct	0	0	0	0	0	0	0	37	2	0	0
Communication / Service	40	65	67	68	75	65	50	48	77	48	59
Act Without/Contrary to Instructions	6	15	13	19	15	11	12	6	34	25	16
Discourtesy	1	10	13	6	8	13	9	11	15	5	15
Delay	7	9	7	11	15	11	8	5	2	3	8
Failure to Respond to Correspondence	0	0	0	0	0	0	0	0	14	10	8
Lack of Supervision	7	2	3	3	7	0	0	1	0	0	5
No Communication	8	9	10	11	14	13	12	11	4	1	4
Failure to Carry Out Instructions	10	14	18	11	15	13	6	10	6	4	3
No Client Advice	1	5	3	6	0	2	2	3	2	0	0
No Advice on Progress	0	1	0	1	1	2	1	1	0	0	0
Non-Compliance	64	53	45	42	102	63	33	39	122	209	179
Not Complying with <i>Legal Profession Act</i> /Regulations	19	19	15	20	41	38	21	30	108	191	152
Not Complying with Undertaking	18	13	8	8	19	9	9	2	3	8	10
Practising without a Practising Certificate	8	11	11	7	36	15	1	4	3	3	6
Practising contrary to Practising Certificate	0	0	0	0	0	0	0	2	2	1	5
Not Complying with Fiscal Obligations	14	8	7	4	4	1	2	1	1	5	4
Failure to Disclose	0	0	0	0	0	0	0	0	5	1	2
Not Complying with a s.660 Notice	5	2	4	3	2	0	0	0	0	0	0

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

DISCIPLINARY MATTERS	13	14	15	16	17	18	19	20	21	22	23
Trust Account matters	60	76	47	40	57	33	15	52	41	22	24
Breach of Sections of Act / Regs relating to Trust Moneys	41	40	23	17	19	2	0	32	37	21	19
Misappropriation	5	26	13	13	16	8	7	14	3	1	5
Failure to Account	14	10	11	10	22	23	8	6	0	0	0
Intermingling Money	0	0	0	0	0	0	0	0	1	0	0
Other	3	0	6	13	14	69	92	7	8	6	0
OLSC Enquiry	0	0	0	0	0	0	69	7	8	0	0
TOTAL NUMBER OF DISCIPLINARY MATTERS	482	441	378	448	600	481	498	450	550	606	589
CONSUMER DISPUTES	64	39	30	1	0	0	0	0	0	0	0
TOTAL NUMBER OF COMPLAINTS OPENED	546	480	408	449	600	481	498	450	550	606	589

Table 2 – Number of complaints opened, by type of complainant, 2013–2023

COMPLAINANT TYPE	13	14	15	16	17	18	19	20	21	22	23
Third Party (Other Side)	68	56	35	94	121	77	98	149	160	218	225
Client/Former Client	124	141	116	115	179	134	115	116	80	83	95
Solicitor	98	81	73	70	72	56	40	47	83	78	84
Third Party	104	84	69	70	69	80	103	74	152	63	64
Beneficiary	0	0	0	0	0	0	0	0	0	36	33
Solicitor for Client	16	12	11	7	6	13	7	12	17	35	28
Barrister	32	11	22	20	22	16	9	14	23	20	27
Other*	3	6	2	6	5	9	16	24	24	8	19
Law Society	94	84	73	60	111	90	104	14	10	7	6
Non-Client	0	0	0	0	0	0	0	0	0	53	5
Executor	0	0	2	0	2	3	1	0	0	3	3
Trust Account Inspector	0	0	0	0	0	0	1	0	0	0	0
Attorney General	0	0	1	0	2	0	2	0	0	1	0
Legal Services Commissioner	7	5	4	7	11	3	2	0	1	1	0
TOTAL NUMBER OF COMPLAINTS OPENED	546	480	408	449	600	481	498	450	550	606	589

Note: 'Other' includes Legal Aid Commission, Government Department and Judge.

Table 3 – Complaints opened, by solicitor type, 2022/2023

SOLICITOR TYPE	NUMBER OF COMPLAINTS	COMPLAINTS AS % OF TOTAL ACTIVE SOLS	% OF TOTAL COMPLAINTS
Principal of Law Practice	350	0.859%	59.42%
Employee of Law Practice	113	0.277%	19.18%
Complaints Against Firms	57	0.139%	9.68%
Not Practising/Ceased Practising	45	0.110%	7.64%
Corporate Legal Practitioner	12	0.029%	2.04%
Government Legal Practitioner	12	0.029%	2.04%
TOTAL NO. OF COMPLAINTS OPENED	589		

Note: At 30 June 2023, total active solicitors 40,745.

Table 4 – Complaints opened, by practice region, 2022/2023

REGION	Number of complaints	REGION	Number of complaints
Sydney City	179	Far North Coast	12
Suburban	273	Far South Coast	4
Bankstown & District	25	Far West	1
Eastern Suburbs	38	Hunter Valley	12
Inner West	43	Mid-North Coast	6
Liverpool & District	14	Newcastle	14
Macarthur	4	North & North West	4
Nepean Hawkesbury	8	Orana	1
Northern Beaches	12	Riverina	3
North Metropolitan	42	South West Slopes	3
Parramatta District	63	Southern Tablelands	4
St George–Sutherland	24	Wollongong	16
Regional/Rural	106	Interstate	6
Albury District	3	Overseas	6
Blue Mountains	4	Other	19
Central Coast	13	TOTAL NUMBER OF COMPLAINTS OPENED	589
Central West	3		
Coffs Harbour	3		

Table 5 – Number of complaints closed, by result, 2022/2023

RESULT TYPE	2023
209 No Further Investigation Required Except Cm – (S277(1)(H))	454
200 Complaint Withdrawn – S273(1)	35
201 Misconceived/Lacking In Substance – S277(1)(A)	32
206 Complaint Better Dealt With By Law Enforcement/Investigatory Body – S277(1)(E)	29
202 Time Limit Not Waived Under S272(1) – S277(1)(B)	17
204 Failure/Inadequate Response To Request For Info – S277(1)(C)	17
205 Complaint Already Has Been Investigated – S277(1)(D)	17
224 D Reprimand – S299(1)(B)	15
235 Referred Back to the OLSC	14
230 D Initiate Tribunal Proceedings – S300(1)	10
211 Public Interest Closure – S277(1)(J)	9
223 D Caution – S299(1)(A)	4
203 Time Limit Re Costs Dispute Not Waived Under S272(2) – S277(1)(B)	2
208 Complaint Subject To Civil Proceedings – S277(1)(G)	2
210 No Power To Investigate Complaint – S277(1)(I)	1
227 D Order Requiring Training, Education, Counselling Or Supervision – S299(1)(E)	1
238 Closed Enquiry	1
TOTAL	660

Table 6 – Number of complaints opened and closed, 2022/2023

COMPLAINT TYPE	OPENED	CLOSED
Act Without/Contrary Instructions	16	24
Borrowing From Clients	1	0
Breach Of Confidentiality	4	3
Breach Section 138 LPUL	4	5
Communication with another Solicitor's Client	7	11
Conflict Of Interest	22	30
Delay	8	5
Discourtesy	15	11
Failure to Account	17	11
Failure to Carry Out Instructions	3	3
Failure to Disclose	2	3
Failure to Pay Third Party	55	51
Failure to Provide Detailed Account	0	2
Failure to Respond To Correspondence	8	5
Failure to Supervise	5	2
Failure to Transfer Documents	1	5
False Swearing Docs	8	10
Liens	0	1
Misappropriation	5	7
Misleading	16	24
Negligence	52	41
No Client Advice	0	1
No Communication	4	7
Non-Compliance with Fiscal Obligations	4	7
Non-Compliance with LPUL/Regs/Rules	152	171
Non-Compliance with Undertaking	10	4
Other	0	4
Other Trust Breaches	15	10
Overcharging	5	4
Practising Contrary to Practising Certificate (PC)	4	2
Practising Without a PC – Post Admission	5	3
Practising Without a PC – Pre Admission	1	1
Threatening Behaviour	38	50
Transfer Costs Without Authority	0	3
Undue Pressure	1	0
Unsupervised Practice – Contrary to PC	1	1
Unethical Conduct	100	138
Total	589	660

Table 7 – Number and type of proceedings instituted at NCAT, 2022/2023

NAME OF SOLICITOR	CONDUCT	FINDING/S	ORDERS MADE	DATE OF ORDERS
Albert Judah	The respondent solicitor breached conditions imposed on his practising certificate.	Professional misconduct	Reprimand Costs	11 August 2022
Nawar Alkhair	The respondent solicitor disclosed confidential information about a loan agreement, in which his client was involved, to a solicitor for parties opposing the client in Supreme Court proceedings.	Professional misconduct	Reprimand Fine Education course Costs	5 October 2022

Table 8 – Practising solicitor statistics at 30 June 2023

GENDER OF SOLICITORS	NUMBER
Female	22,335
Male	18,410
TOTAL	40,745

CATEGORY OF SOLICITORS	NUMBER
Employee of a law practice	17,801
Principal of a law practice	10,222
Corporate legal practitioner	8,087
Government legal practitioner	4,553
Volunteer	82
TOTAL	40,745

LOCATION OF SOLICITORS	NUMBER
City	19,870
Suburban (Sydney)	13,544
Rural	4,791
Overseas	2,097
Interstate	443
TOTAL	40,745

Table 9 – Amounts expended by the Public Purpose Fund and Fidelity Fund on Regulation, 2022/2023

EXPENSE DESCRIPTION	RECOVERABLE FROM	TOTAL	
Professional Standards / General Regulatory Expenses	Public Purpose Fund	7,443,725	
External Interventions	Public Purpose Fund	830,471	
Trust Account Inspections / Investigations	Public Purpose Fund	2,803,304	
Fidelity Fund Administration	Fidelity Fund	785,208	
TOTAL REGULATORY COSTS	11,862,708		
TOTAL PAID FROM PUBLIC PURPOSE FUND	11,077,500		
TOTAL PAID FROM FIDELITY FUND	785,208		



PROFESSIONAL
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THE LAW SOCIETY
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