

LEGAL SERVICES COMMISSIONER
ANNUAL REPORT 2007



Legal Services **COMMISSIONER**

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What is the Legal Services Commissioner?

The Legal Services Commissioner is the single gateway for the fair, independent and efficient handling of complaints against lawyers.

The Legal Services Commissioner is responsible for the receipt, investigation and resolution of complaints about lawyers in Victoria, as well as the conciliation of disputes between lawyers and their clients.

Established on 12 December 2005 under the *Legal Profession Act 2004*, the Legal Services Commissioner replaced the Legal Ombudsman and three other bodies which dealt with complaints about lawyers.

All regulatory power and critical decision-making for the investigation and prosecution of complaints is now vested in this one independent agency.

This new scheme streamlines complaints resolution by eliminating confusion associated with the old, multiple-entry system, to the benefit of both consumers and the legal profession.

The new legislation governing the legal profession also advances Victoria's commitment to a national legal profession by introducing many uniform rules.

Victoria Marles is the first Legal Services Commissioner. She is a former Deputy Telecommunications Industry Ombudsman. Ms Marles is also the CEO of the Legal Services Board.

Our Approach

Our Mission: The Legal Services Commissioner strives to raise the standard of legal services provided in Victoria to a level of excellence and to deliver high consumer satisfaction.

Our statutory objectives: The statutory objectives of the Legal Services Commissioner are to:

- » ensure that complaints against legal practitioners and disputes between law practices or legal practitioners and clients are dealt with in a timely and effective manner;
- » educate the legal profession about issues of concern to the profession and to consumers of legal services; and
- » educate the community about legal issues and the rights and obligations that flow from the client-practitioner relationship.

Our business objectives: The Legal Services Commissioner aims to:

- » develop and maintain an independent, impartial and accessible system for managing complaints against legal practitioners;
- » be accountable to and transparent in dealing with our stakeholders;
- » enhance community and consumer understanding of legal practice;
- » work with community organisations to identify issues of concern;
- » work with the legal profession to ensure that legal services in Victoria meet the highest standards of excellence;
- » assist legal practitioners in understanding, managing and meeting consumer expectations; and
- » continually identify best practices in the provision of legal services.

Our customer approach: Within the Legal Services Commissioner's jurisdiction, powers and resources, we will:

- » assist parties with their complaints or enquiries, including the resolution of civil disputes;
- » give careful consideration to any complaint made about a legal practitioner;
- » investigate the matters we undertake fairly, impartially and in a timely manner; and
- » clearly and promptly communicate to both the complainant and legal practitioner the decision and reasons for it at the conclusion of our investigation.

Commissioner's Report

The office of the Legal Services Commissioner opened on 12 December 2005 with the enactment of the *Legal Profession Act 2004*. This annual report records the first full year of operation.

On the first day of operations, the Commissioner became the single gateway for all complaints about legal practitioners and law practices. All complaints must now start and finish with the Commissioner. The Commissioner also became responsible for all of the unresolved complaints and disputes that were then in the hands of the Law Institute of Victoria Ltd, the Victorian Bar Inc and the Legal Ombudsman. This constituted a large workload for the new office. A major achievement for the office during this year has been to deal with most of these old complaints as well as handling the new complaints which arrive every week.

Over the year, my office received 2,053 complaints. It is not surprising that the majority were about the standard of behaviour of the practitioner – what we refer to as disciplinary complaints. For most individuals, purchasing legal services is a big decision and is usually about issues that matter a lot to them. This situation can create high expectations and it demands a high level of trust in the practitioner. As expected, those areas of law that deal with people's personal affairs attract the most complaints. Family law continues to be the most commonly complained about area, followed by commercial law, probate and estate, conveyancing.

The issue most often complained about is the cost of legal services. Even in this era of plain English, the law and its processes remain complex and it can be difficult for the profession to outline what clients can expect. Yet the profession has an obligation to give clients a clear understanding of what the costs of legal services will be – usually in advance and in writing. The office closed 614 civil complaints which were predominantly about costs. Of these we were able to settle around 60% of the disputes that were within jurisdiction where the complainants had provided all necessary information.

We find, however, that it is not just the amount of the legal bill that has upset clients. It is other service delivery issues that could be easily fixed, like returning phone calls, replying to correspondence from clients, advising them of any changes in the law practice office or the handling of their matter. We aim to identify systemic issues arising from complaints so that feedback and education can be appropriately targeted.

During the year the office further developed its systems and procedures for managing complaints and adopting principles of accessibility, fairness, impartiality, accountability, effectiveness and efficiency. This included the way in which it works with the professional associations which provide investigation and dispute resolution services to the Commissioner. Every matter referred to these organisations goes with precedents, guidelines and protocols for managing and reporting back on the particular kind of complaint. This is important because when we refer complaints to the professional associations the final decision rests with the Commissioner.

A new piece of legislation means new ways of doing things so it is important to keep stakeholders informed of changes. The office has continued its efforts to raise awareness and in the last year the number of enquiries to the office has increased from an average of 75 a week to an average of 97 a week. Central to this work is the publication of information brochures for the public about costs, how to make complaints and how to work with lawyers. In addition the website was reviewed during the year to make sure that it is accessible, contains information about the system and includes relevant forms for download.

As well as dealing with complaints the Commissioner has statutory objectives to educate the legal profession about issues of concern and also to educate the community about legal issues and the rights and obligations flowing from the client-practitioner relationship. Our office sees these objectives as the means for taking a preventative approach. Taking this type of approach involves working with others and staying in touch with the concerns of the public and the profession. I have begun a program of seeking views on the provision of legal services. To assist with this, I established a reference group and the office liaised with many different groups including the professional associations. This work included a program of country visits to legal practitioners and community groups. It has been instructive to hear common issues of concern. Over the next year our focus will continue to be working with both the profession and the public to ensure that the lawyer-client relationship is well understood and both groups are informed of their rights and obligations.

The office also began a program of ethics workshops with the profession to help work through some of the difficult issues they confront. We extended this program by running them for law students.

The Act represents a new phase in the regulation of the legal profession in Victoria. This is because it reflects a shared commitment to a national approach. During the year our office has liaised and cooperated with interstate counterparts as much as possible.

The Commissioner employs all the staff who work on either the functions of the Legal Services Commissioner or the Legal Services Board. This year work continued on building the organisations. I would like to thank the staff for all their hard work. It has been challenging and I greatly appreciate their commitment and endeavours.

I look forward to continuing the work of providing an accessible and independent complaints handling service for the public generally and to working with the legal profession to ensure that legal services in Victoria meet the highest possible standards.

Victoria Marles
Legal Services Commissioner



What we have achieved



Publications and the Legal Services Commissioner's website

Five publications are available from the Legal Services Commissioner as at 30 June 2007, in print and online. The publication *Working with your lawyer* is available in English and 10 community languages (Arabic, Chinese, Croatian, Greek, Italian, Macedonian, Serbian, Spanish, Turkish and Vietnamese).

Established Community Outreach Program

- » The Legal Services Commissioner has a rural and regional outreach program. This year the Legal Services Commissioner and staff have visited Geelong, Sale, Bendigo and Ballarat to meet with referral sources including Court Network, Salvation Army, community legal centres, Victoria Legal Aid and members of Parliament.
- » There is also a community speaking program to increase awareness and understanding of our office, including guest speaking engagements with Probus and Senior Citizens groups.
- » As part of Law Week, the Legal Services Commissioner was guest speaker at a public forum on "Getting the Best from your Lawyer" held at the Law Institute, and provided articles for publications and media on the role of our office.

Education of the legal profession

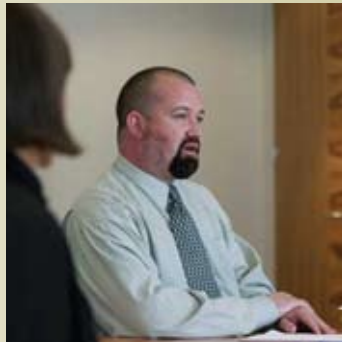
- » The Legal Services Commissioner offers ethics workshops to members of the legal profession. Participants have included suburban and regional legal practitioners.
- » The Legal Services Commissioner also addresses special interest groups of the profession, including corporate lawyers, government lawyers, and Victoria Legal Aid lawyers.
- » The Legal Services Commissioner lectures regularly on ethics and the responsibilities under the *Legal Profession Act 2004*. During the year, the Legal Services Commissioner and staff have addressed law students at Monash, Melbourne and La Trobe universities.

Greater liaison with the legal profession

- » The Legal Services Commissioner holds regular meetings with professional organisations, including the Law Institute, the Victorian Bar, the Australian Corporate Lawyers Association and community legal centres.
- » The Legal Services Commissioner has also met with a significant number of the managing partners of large and medium size law firms about issues including ethics and dealing with potential conflicts of interest.

Greater liaison with other regulatory and complaints bodies

- » The Legal Services Commissioner has met with the Legal Services Commissioners from New South Wales and Queensland about complaints handling processes and national consistency.
- » There were regular meetings with Judges and judicial officers of courts and tribunals including the Supreme Court of Victoria and the Victorian Civil and Administrative Tribunal about the smooth administration of the regulatory scheme.
- » There was also regular contact about common complaint issues and complaint handling practices with complaint handling bodies, commissioners and ombudsmen in Victoria.
- » The Legal Services Commissioner attended the national conference of regulatory officers held in Sydney in November 2006. At the conference, the legal regulators from across Australia conferred on current topics including the incorporation of legal practices.



Stakeholder engagement

- » Engagement with other key stakeholders included government (State and local), the judiciary, police and the media about issues of concern to the legal profession and consumers.
- » The Legal Services Commissioner has a new website www.lsc.vic.gov.au, which contains updated information about our role, a complaint form, our brochures and our public statements and policies.

Developed policies

The following public policies/guidelines have been developed and approved during the year:

- » Privacy policy
- » Whistleblowers procedures

We have also commenced preparation for implementing our responsibilities under the *Charter of Human Rights and Responsibilities Act 2006*.

Continuous improvement

- » We are undertaking analysis of complaint data to inform improvement in legal practice and regulation.
- » This analysis will also inform complaints handling practices to ensure we become more effective.
- » We are developing strategies so as to establish the Legal Services Commissioner as a leader in legal regulatory matters.

Established Reference Group

The Legal Services Commissioner has established a reference group to advise her on issues of concern to consumers of legal services and the profession. Membership includes representatives from Victoria Legal Aid, the Victorian Bar, a plaintiff law firm, a mediator, the Federation of Community Legal Centres, Victoria Police, a legal academic and a community representative from Court Network.

The reference group held its first meeting in March and a second meeting in May.

Publications and the Legal Services Commissioner's website

Publications available from the Legal Services Commissioner as at 30 June 2007, in print and online, include:

- » *Do you have a problem with your lawyer?*
- » *Working with your lawyer*
- » *Are you making a complaint about legal costs?*
- » *Are you claiming you have lost money because of something your lawyer did or failed to do?*
- » *Mediation Service explained*
- » *Fact sheet – The Legal Services Commissioner*

The publication *Working with your lawyer* is available in English and 10 community languages (Arabic, Chinese, Croatian, Greek, Italian, Macedonian, Serbian, Spanish, Turkish and Vietnamese).

The Annual Report will be available in print and online following tabling in Parliament.

The Legal Services Commissioner's website, www.lsc.vic.gov.au provides information on services and a complaint form can be downloaded from the site.

Information technology

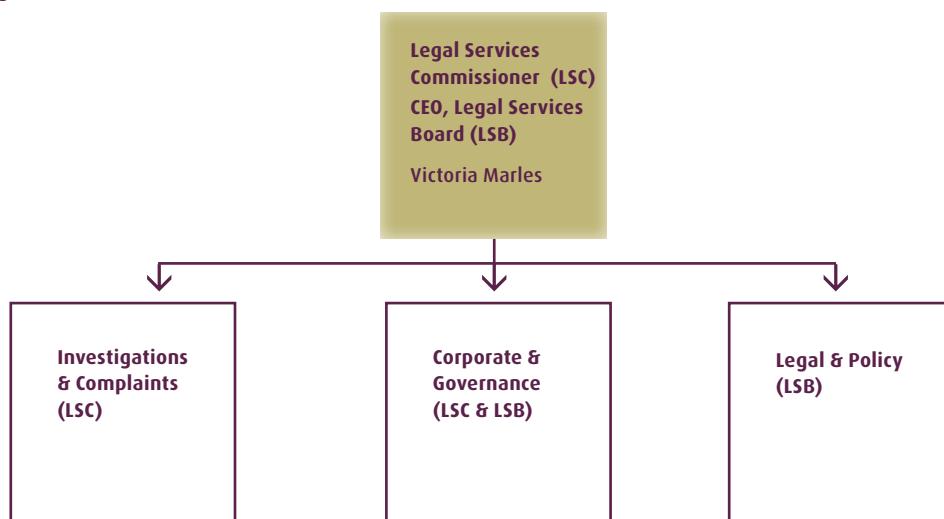
Work has begun on developing a new computerised complaint system to use technology to streamline complaint handling procedures and to better record, analyse and track complaint data.

Our green office

The "Green Team" was formed in January 2007. Representatives of staff and management are on the Team which has already developed an environmental policy for the organisation focussing on waste reduction and maximising recycling, energy efficiency, water use minimisation and green product purchase and promotion.

Human Resources

Organisational structure



Employment of staff

In accordance with section 6.4.1 of the *Legal Profession Act 2004*, the Legal Services Commissioner employs staff for the Legal Services Commissioner and for the Legal Services Board. Members of staff are employed by the Legal Services Commissioner under Part 3 of the *Public Sector Management and Employment Act 1998*.

Workforce data

Below is a profile of the Legal Services Commissioner's workforce.

	Ongoing Employees			FTE	Fixed term & Casual FTE
	Number (headcount)	Full time (headcount)	Part time (headcount)		
June 2007	45	39	6	42.6	4.4
June 2006	30	26	4	28.6	1.8

	June 2007			June 2006		
	Ongoing Employees		Fixed term & Casual	Ongoing Employees		Fixed term & Casual
	Number (headcount)	FTE	FTE	Number (headcount)	FTE	FTE
Gender						
Male	6	5.6	1.4	4	4	0.2
Female	39	37	3	26	24.6	1.6
Age						
Under 25	2	2	0.4	3	3	0.8
25-34	17	16.4	3	11	10.8	1
35-44	8	7.2	0	4	4	0
45-54	15	14.2	1	8	7.2	0
55-64	3	2.8	0	4	3.6	0
Over 64	0	0	0	0	0	0
Classification						
VPS 1	0	0	0	0	0	0.2
VPS 2	7	6.4	1.4	4	3.8	1.6
VPS 3	9	9	1	9	8.6	0
VPS 4	5	4.6	1	3	3	0
VPS 5	12	11.2	1	6	6	0
VPS 6	8	7.4	0	5	4.2	0
STS	1	1	0	1	1	0
Executives	3	3	0	2	2	0
Other	0	0	0	0	0	0

Merit and equity principles

The Legal Services Commissioner is committed to applying merit and equity principles to ensure that applicants for employment are assessed and evaluated fairly and equitably on the basis of the key selection criteria and other accountabilities without discrimination.

Occupational health and safety

The Legal Services Commissioner is committed to occupational health and safety compliance, as well as the general health and well being of those persons occupying the premises.

Issues relating to the maintenance of a safe working environment and safe working practices are also considered and reported, according to legislative and internal procedures.

Public sector values and principles

In 2006/07, the new public sector values and employment principles were introduced to the staff of the Legal Services Commissioner. Managers and members of staff were trained, and performance progression and development plans included specific reference to the public sector values. The values are also incorporated into the induction program for new members of staff.

Professional development

During 2006/07, the Legal Services Commissioner developed and implemented an induction program for all members of staff. Members of staff also undertook a range of training and development programs to better equip them to meet the challenges of their roles. All members of staff are expected to undertake some practical training as part of their ongoing professional development.

Performance progression and development plans established

During 2006/2007, each member of staff prepared a detailed performance progression and development plan, in consultation with their manager. Each plan outlines the officer's work objectives and the skills and knowledge required for the role. Feedback and review meetings are conducted every six months to focus on the employee's current level of performance and opportunities for improvement. A key aim of the performance planning and development system was to ensure that all members of staff work to achieve the organisation's goals.

Introduction to Complaints

One of the core objectives of the Legal Services Commissioner is to receive and process complaints against legal practitioners and law practices.

Complaints handling is a major function of the Legal Services Commissioner¹

Complaints data

The complaints data in this report covers complaints handled by the Legal Services Commissioner in the period from **1 July 2006 to 30 June 2007**. This includes complaints and disputes received under the *Legal Profession Act 2004* and the *Legal Practice Act 1996* (**the old Act**).

The complaints data is presented in two parts:

- » Part A deals with enquiries, complaints and delegations made under the *Legal Profession Act 2004*;
- » Part B deals with complaints made under the old Act.

Reason for complaints data being presented in two parts

The reason for the two separate parts is that complaints are defined and required to be handled differently under the provisions of the *Legal Profession Act 2004* than they were previously under the terms of the old Act. For example, the definition of complaint under the *Legal Profession Act 2004* **includes** a dispute whereas under the old Act it was confined to disciplinary conduct. Another significant difference is that under the old Act cost disputes were limited to amounts not greater than \$15,000 whereas under the *Legal Profession Act 2004* the limit for costs disputes is \$25,000 in any one matter.

How to read this report

Because this report is in two parts, it is necessary to consider the data in both parts to best understand the workload and outcomes of the Legal Services Commissioner. For example, the total number of files closed by the Legal Services Commissioner during the year can be obtained by adding the figures in Table 2 (Part A) and Table 20 (Part B): which number is 2550.

Comparisons between data in this report and data in first annual report

Limited comparisons can be made between the data in this report and the Legal Services Commissioner's first annual report. The first annual report dealt with the period 12 December 2005 until 30 June 2006, a period of less than seven months. This period was the commencement of the office, and the Legal Services Commissioner immediately became responsible for all complaints opened by the Law Institute and the Victorian Bar. The Legal Services Commissioner has since further refined its processes and data collection. This report deals with the first full year of operations where the complaints data has been gathered in line with these systems. Where practicable, reference is made to data from the first annual report.

Key terms

A reference to the **Law Institute** in Part A or Part B means the Law Institute of Victoria Ltd.

A reference to the **Tribunal** in Part A or Part B means the Victorian Civil and Administrative Tribunal.

A reference to the **Victorian Bar** in Part A or Part B means the Victorian Bar Inc.

The following abbreviations are used in the tables:

BAR	Victorian Bar
LIV	Law Institute of Victoria
LSC	Legal Services Commissioner
VCAT	Victorian Civil & Administrative Tribunal

Compliance

This report is made in compliance with section 6.3.13 of the *Legal Profession Act 2004* and section 426 of the old Act.

¹ See p1542 of the second reading speech to the *Legal Profession Bill 2004*.

1. Enquiries

The Legal Services Commissioner provides a free enquiries service to assist members of the public with their preliminary enquiries. Enquiries are made by telephone, in writing or in person.

The enquiries service is often the first important step in the complaints handling process. At this point, in certain circumstances, it may be suggested to the consumer that they try to resolve the issue directly with their legal practitioner. This may result in the legal practitioner addressing the consumer's concerns before a formal complaint is made. A consumer may also be advised that the nature of their complaint does not fall within the jurisdiction of the Legal Services Commissioner. This assists in streamlining the process for complaints.

Table 1 – Enquiries

Table 1 shows the total number of enquiries made to the Legal Services Commissioner during the year, and the outcome of those enquiries. Not all enquiries to the Legal Services Commissioner fell within her jurisdiction. For example, callers may have complained about prisons or the court system.

Complaint Form sent	Information provided to complainant – no further action	Referral to other body	No jurisdiction	Total
1697	1631	1750	11	5089

The number of enquiries made to the Legal Services Commissioner has increased since commencement of the office (12 December 2005). In the first reporting period the Legal Services Commissioner received 2100 enquiries - about 75 a week. Now, the office receives on average 97 enquiries a week. It is to be expected that enquiries will increase as the public becomes aware of the "new" office.

2. Complaints

2.1 General information about complaints and complaints handling

2.1.1 Making a complaint

The Legal Services Commissioner may receive a civil complaint, a disciplinary complaint or a combination of both (mixed complaints).

2.1.2 Form and content of complaints

Section 4.2.6 of the *Legal Profession Act 2004* provides that a complaint **must** be made in writing in the form approved by the Legal Services Commissioner. A complaint may be in a letter or on the complaint form which is available on the Legal Services Commissioner's website, and can also be obtained on request.

Section 4.2.6 also provides that a complaint must include –

- » the name and address of the complainant;
- » the name of the law practice or legal practitioner who is the subject of the complaint;
- » if the subject of the complaint is a legal practitioner, the name of any law practice of which the legal practitioner is an associate;
- » details of the conduct complained about;
- » if the complainant is seeking compensation for pecuniary loss, the amount of the loss or the complainant's best estimate of the amount.

2.1.3 Dealing with complaints

The *Legal Profession Act 2004* creates two different types of complaints – a civil complaint (involving a civil dispute) and a disciplinary complaint. These are explained in Parts 2.1.5 and 2.1.6 respectively. It is not necessary for the person making the complaint to specify the type of complaint. It is up to the Legal Services Commissioner to make every effort to understand the nature of the complaint.

After receiving a complaint, the Legal Services Commissioner gives careful consideration to it. The Legal Services Commissioner decides how to deal with the complaint based on the nature of the complaint and any initial enquiries to, and communications with, the complainant.

The Legal Services Commissioner's role in civil disputes is to attempt to enable the parties to reach settlement. This usually involves telephone and written communications with both the complainant and the legal practitioner. In some cases the Legal Services Commissioner will arrange for the legal practitioner's file to be costed. On other occasions the Legal Services Commissioner will arrange for a formal mediation to be held by one of her mediators in an attempt to settle the dispute. In the event that the parties do not reach agreement on settling the dispute they are advised of their rights to refer their matter to the Tribunal.

The Legal Services Commissioner's role in disciplinary complaints is to investigate the conduct of the legal practitioner. This involves communicating by telephone and in writing with the legal practitioner and the complainant. The legal practitioner's file may be perused and information may be sought from third party practitioners who are not the subject of the complaint. Documentation may be voluminous and investigations can be complex and time consuming.

There are also certain circumstances where, after careful consideration of the complaint, and where appropriate, communication with the complainant, that the Legal Services Commissioner does not take a civil or disciplinary complaint to finality but rather closes the file at an earlier stage.

Section 4.2.10 of the *Legal Profession Act 2004* allows the Legal Services Commissioner to dismiss a complaint. This includes where:

- » further details are not provided, or the details of the complaint are not verified;
- » the complaint is vexatious, misconceived, frivolous or lacking in substance;
- » the conduct complained about has been the subject of a previous complaint that has been dismissed;
- » the conduct complained about is the subject of another complaint;
- » the complaint is not one the Legal Services Commissioner has power to deal with; or
- » in the case of a disciplinary complaint, the Legal Services Commissioner, having considered the complaint, forms the view the complaint requires no further investigation.

The breadth of section 4.2.10 is in contrast to the power to dismiss a complaint under the old Act. Section 141 of the old Act allowed the Legal Ombudsman, an RPA (recognised professional association) or the Legal Practice Board to dismiss a complaint if satisfied that the complaint is “frivolous, vexatious, misconceived or lacking in substance”. A complaint did not include a dispute under the old Act.

After either assisting the parties to resolve their dispute or investigating a disciplinary complaint, a number of different outcomes are possible. These include resolution of the complaint, withdrawal of the complaint following receipt of an explanation by the legal practitioner and dismissal of the complaint.

A disciplinary investigation will result in no further action if the Legal Services Commissioner is not satisfied that the Tribunal would find the legal practitioner guilty of a disciplinary breach. To reach this decision, the Legal Services Commissioner has to consider the strict burden of proof that the Tribunal applies in disciplinary proceedings. The Legal Services Commissioner communicates to the complainant the reasons why the decision has been made. Even if these complaints do not result in disciplinary findings they still reflect complainants’ real and often upsetting negative experiences with legal practitioners. Despite no disciplinary action being taken, many of these complaints may result in legal practitioners taking notice and making commitments to improve their work practices.

No matter what decision the Legal Services Commissioner makes and at what stage, the Legal Services Commissioner promptly and clearly communicates to both the complainant and legal practitioner the decision and reason for it at the conclusion of handling the matter.

2.1.4 Complaints may be withdrawn

A person may withdraw a complaint after it has been made. Often this occurs after a legal practitioner has provided an explanation of their conduct to the Legal Services Commissioner, which is then provided to the complainant. Complaints are also withdrawn where the complainants realise that their concerns about the conduct of legal practitioners are unwarranted. For example, where a complainant has complained about a legal practitioner and delays and then realises after discussions with the Legal Services Commissioner that the delay was caused by court processes rather than any action or inaction of the legal practitioner.

Where a civil complaint involving a costs dispute is withdrawn, and the disputed costs have been lodged with the Legal Services Commissioner, the costs must be paid to the law practice or legal practitioner.

Where a disciplinary complaint is withdrawn, the Legal Services Commissioner may nonetheless continue to investigate the conduct of the legal practitioner.

Part A *continued*

2.1.5 Civil complaints

A civil complaint is a complaint about conduct to the extent that it involves a **civil dispute**.

A civil dispute is any one of the following:

- » a “costs dispute” in relation to legal costs not exceeding \$25,000 in respect of any one matter;
- » a claim that a person has suffered a pecuniary loss as a result of an act or omission by a law practice or legal practitioner; or
- » any other genuine dispute between a person and a law practice or legal practitioner.

Generally, only a client may make a civil complaint to the Legal Services Commissioner.

The Legal Services Commissioner is required to attempt to **resolve** a civil dispute that is the subject of a civil complaint and may take any action she considers necessary to assist the parties to reach agreement. The Legal Services Commissioner may in appropriate cases refer a civil dispute for mediation and, in the case of a costs dispute, arrange for a non-binding assessment of legal costs.

Dispute resolution

The majority of civil complaints resolved by the Legal Services Commissioner during the year occurred in-house: i.e. over the telephone or in writing by the Legal Services Commissioner without recourse to a formal mediation process. A significant number of civil disputes were also withdrawn because the complainants were satisfied with the legal practitioner’s explanation of the matter.

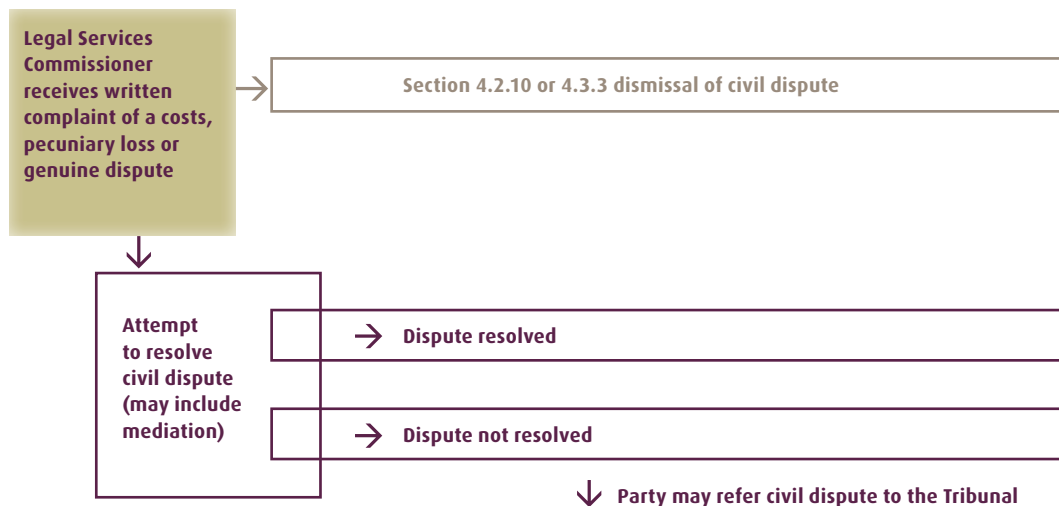
Under the *Legal Profession Act 2004*, mediation is a formal process where an independent mediator is appointed to mediate the dispute, at no cost to the parties. The Legal Services Commissioner has appointed a panel of mediators for this purpose. There were nine mediations held during the year, seven of which resulted in the parties settling their dispute.

The role of VCAT with respect to civil disputes

Where the parties are unable to resolve their dispute before or with the assistance of the Legal Services Commissioner, they may apply to the Tribunal. At that point, the role of the Legal Services Commissioner effectively ends – with the exception of the handling of disputed costs in trust (see next page).

The process for handling civil disputes

A **civil dispute** is handled in the following way:



Disputed costs in trust

A complainant who makes a civil complaint that involves a **costs dispute** must **lodge the unpaid amount of the legal costs** with the Legal Services Commissioner within 28 days² after making the complaint: s4.3.3(1).

The Legal Services Commissioner may determine in any case that a complainant need not lodge a disputed amount, or may lodge a lesser amount, if satisfied that lodgement would cause the complainant undue hardship: s4.3.3(2).

The Legal Services Commissioner must dismiss a complaint to the extent that it involves a costs dispute if the complainant fails to comply with these requirements.

During the year, the Legal Services Commissioner received \$601,620 (unpaid legal costs) in trust. This represents only a proportion of the total amount of costs in dispute. The reason for the difference includes monies already having been paid to the legal practitioner and dispensations granted by the Legal Services Commissioner on account of financial hardship.

Analysis undertaken by the Legal Services Commissioner of civil disputes indicates that when the Legal Services Commissioner holds a disputed amount in trust the parties are more likely to settle their dispute. Resolution is also more likely where the disputed amount is less than \$5,000.

Discretions

In handling costs disputes the Legal Services Commissioner is often required to make a number of important decisions as part of the process. Where a costs dispute is made out of time, the Legal Services Commissioner has the discretion to accept it in certain circumstances. In making this decision the Legal Services Commissioner may consult with the complainant about the reasons for delay.

The Legal Services Commissioner may waive the requirement to lodge the unpaid disputed costs. In making this decision, the Legal Services Commissioner may communicate with the complainant and request evidence to support the request.

The Legal Services Commissioner also has the discretion to refer a civil dispute to a formal mediation or, in the case of a costs dispute, arrange for a non-binding assessment of the legal costs.

² The *Legal Profession Act 2004* was amended during the year increasing the number of days from 21 to 28.

2.1.6 Disciplinary complaints

A disciplinary complaint is a complaint about the conduct of a legal practitioner to the extent that the conduct, if established, would amount to **unsatisfactory professional conduct** or **professional misconduct**. Any person may make a disciplinary complaint to the Legal Services Commissioner.

Unsatisfactory professional conduct is defined to include conduct of a legal practitioner occurring in connection with the practice of law that falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent legal practitioner.

Professional misconduct is more serious. It is defined to include –

- » unsatisfactory professional conduct of a legal practitioner, where the conduct involves a substantial or consistent failure to reach or maintain a reasonable standard of competence and diligence; and
- » conduct of a legal practitioner, whether occurring in connection with the practice of law or occurring otherwise than in connection with the practice of law, that would, if established, justify a finding that the legal practitioner is not a fit and proper person to engage in legal practice.

The Legal Services Commissioner is required to **investigate** each disciplinary complaint, subject to certain exceptions. The Legal Services Commissioner may also refer an investigation to a prescribed investigatory body.³ The Law Institute and the Victorian Bar are deemed by the *Legal Profession Act 2004* to be prescribed investigatory bodies. Where the Legal Services Commissioner refers an investigation to a prescribed investigatory body, all decisions are made by the Legal Services Commissioner.

The Legal Services Commissioner may also investigate the conduct of a legal practitioner on her own motion, if she has reason to believe that the conduct may amount to unsatisfactory professional conduct or professional misconduct.

After an investigation of a disciplinary complaint is completed, the Legal Services Commissioner must deal with the matter as follows.

If the Legal Services Commissioner is satisfied that there is a reasonable likelihood that the Tribunal would find a legal practitioner guilty of **unsatisfactory professional conduct**, the Legal Services Commissioner **may** –

- » apply to the Tribunal for a disciplinary order;
- » with the consent of the legal practitioner, reprimand or caution the practitioner;
- » take no further action (if legal practitioner is generally competent and diligent and there has been no substantiated complaint within the last 5 years);
- » require the legal practitioner to pay compensation instead of applying to the Tribunal for an order.

The Legal Services Commissioner **must** apply to the Tribunal for a disciplinary order where she finds that there is a reasonable likelihood that the Tribunal would find the legal practitioner guilty of **professional misconduct**.

Whether or not the Legal Services Commissioner determines to take disciplinary action is dependent upon whether she considers that the Tribunal would be likely to find a legal practitioner guilty of unsatisfactory professional conduct or professional misconduct. The standard of proof in disciplinary matters before the Tribunal is higher than the usual civil standard.⁴ Also relevant in this context are the model litigant rules (see following).

Even where the Legal Services Commissioner does not refer a matter to the Tribunal for a disciplinary order the effects of making a complaint about a legal practitioner's conduct often result in a commitment to improved service provision. This is because legal practitioners are generally eager to avoid future complaints and will make efforts to improve their conduct. Further, the Legal Services Commissioner may also make suggestions to the legal practitioner about how to do so.

³ The Legal Services Commissioner undertook 696 investigations during the year, which includes investigations undertaken by the prescribed investigatory bodies on her behalf (see Table 6).

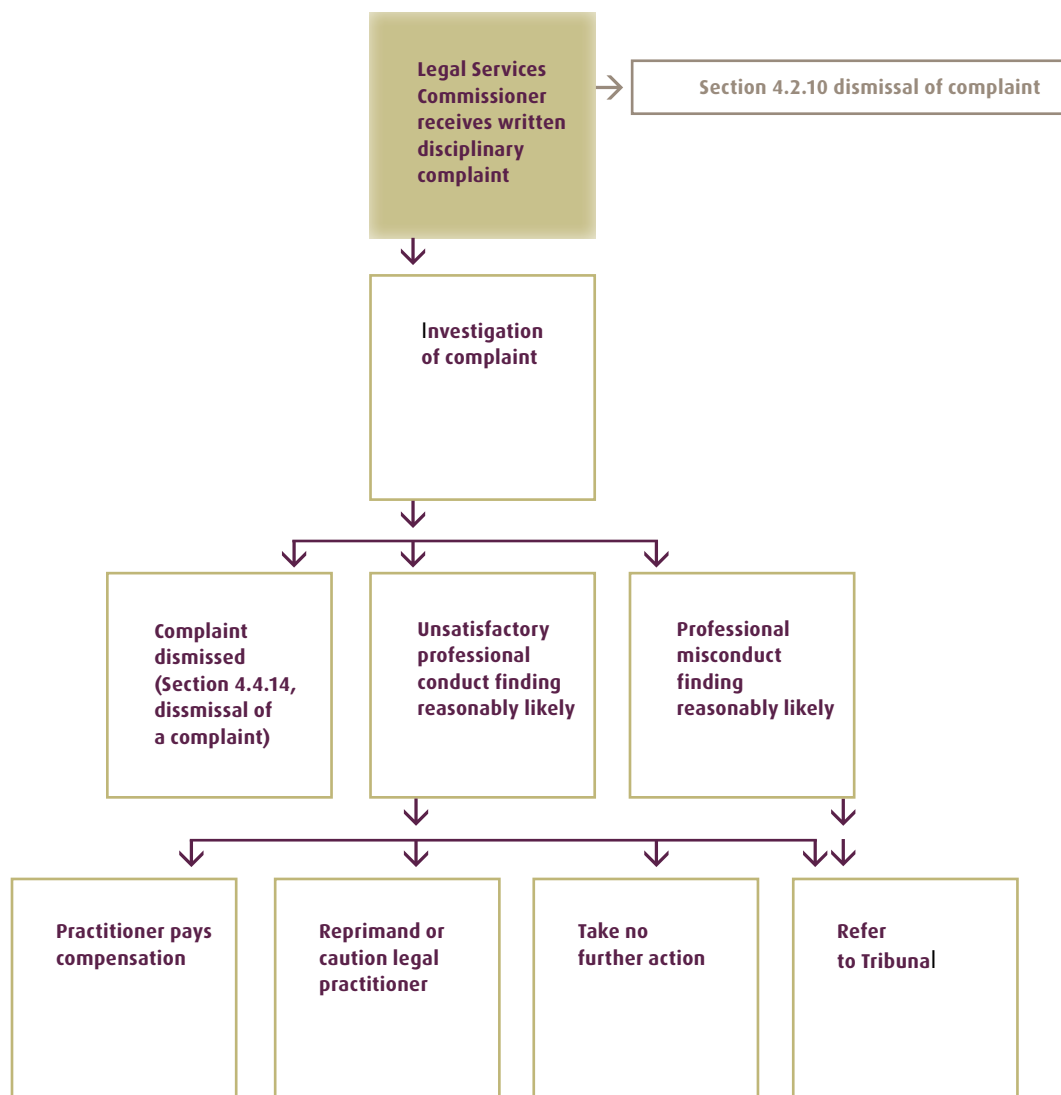
⁴ Commonly known as the "Briginshaw test", see *Briginshaw v Briginshaw* (1938) 60 CLR 336.

Model litigant rules

As an independent statutory authority, the Legal Services Commissioner is committed to acting as a “model litigant”. This requires the Legal Services Commissioner to act fairly and conscientiously in litigation, and in accordance with the highest professional standards. It also requires the Legal Services Commissioner to avoid litigation unless there are reasonable prospects for success.

The process for handling a disciplinary complaint

A **disciplinary complaint** is handled in the following way:



Time taken to investigate

The investigation of a disciplinary complaint is generally more time intensive than the handling of a civil dispute. Because the consequences of an investigation may be very serious, and may include laying charges against the legal practitioner, they require careful and considered investigation and deliberation. Documentation and other evidence has to be sought, obtained and considered. A legal practitioner's livelihood and reputation are at stake. A legal practitioner is entitled to natural justice and must be given the opportunity to respond to the complaint as well as comment on the proposed decision. The complainant is also communicated with during the process and given the opportunity to provide comments on the legal practitioner's explanation. If a legal practitioner fails to respond to a request for documents and/or an explanation, charges may be laid (see Table 16).

2.1.7 Complaints involving both a disciplinary complaint and civil complaint (mixed complaints)

Where the Legal Services Commissioner receives a complaint involving a civil complaint and a disciplinary complaint, both of the above processes occur at the same time.

2.1.8 Our relationship with the professional associations

The Legal Services Commissioner was created as the "single gateway" for the receipt and handling of complaints against legal practitioners and law practices.

While the Legal Services Commissioner is the key decision maker with respect to complaints, she may refer investigations to the professional associations (in their capacity as prescribed investigatory bodies) and delegate certain functions to them.⁵ The professional associations in Victoria are the Law Institute of Victoria Limited and the Victorian Bar Inc.

The Legal Services Commissioner has entered into a Service Level Agreement with the Law Institute to manage the relationship between them. This Agreement is reviewed regularly.

Protocols are currently being developed with the Victorian Bar with respect to the investigation of complaints and the handling of civil disputes.

The Legal Services Commissioner acknowledges the work of the professional associations in this context. The Legal Services Commissioner is committed to continuous improvement in complaints handling and is grateful for the professional associations' efforts and cooperation in this regard.

5 The Legal Services Commissioner referred/delegated 531 complaints (includes both disciplinary and civil complaints) to the professional associations during the year. The professional associations also had other open complaint files on foot, which we referred to them in the previous financial year. For further information, see Part 2.3.

2.2 New files

The Legal Services Commissioner received 2053 new complaints during the year. A complaint may involve a civil complaint, a disciplinary complaint or a mixture of both. One file is opened for each new complaint even if it is a mixed matter.

Tables 2, 3, 4 and 5 show the number and type of complaints received by the Legal Services Commissioner during the year.

Table 2 – Files opened

Table 2 shows the total number of complaints received by type of complaint.

Civil ⁶	Disciplinary	Mixed	Total
506	1113	434	2053

Consistent with past operations, disciplinary complaints outnumber civil complaints. The Legal Services Commissioner received 1218 complaints in the first reporting period, made up of 664 disciplinary complaints, 310 civil disputes and 244 mixed complaints. This is not unexpected, given that any person may make a disciplinary complaint but only certain persons may make a civil complaint. Further, while a complaint may raise civil issues such as costs, as well as disciplinary issues, if the disputed costs are not lodged, the file can only be handled as a disciplinary file.

Based on these statistics, the Legal Services Commissioner opens on average 40 complaint files a week.

Table 3 – Files opened against solicitors

Table 3 shows the total number of complaints received against solicitors by type of complaint.

Civil	Disciplinary	Mixed	Total
498	1062	403	1963⁷

Table 4 – Files opened against barristers

Table 4 shows the total number of complaints received against barristers by type of complaint.

Civil	Disciplinary	Mixed	Total
8	51	31	90⁸

Table 5 – Files opened against solicitors and barristers

Table 5 compares the number of complaints received against solicitors and barristers by type of complaint.

	Civil	Disciplinary	Mixed	Total
Solicitors	498	1062	403	1963
Barristers	8	51	31	90
Total	506	1113	434	2053

The number of complaints received against solicitors far outnumbers the number of complaints received against barristers. There are two principal reasons for this. First, there are more solicitors practising in Victoria than barristers. Secondly, solicitors have more contact with consumers because of the nature of their work.

6 The majority of civil disputes were costs disputes (rather than pecuniary loss claims or other genuine disputes).

7 The Legal Services Commissioner received 1185 complaints against solicitors in the first reporting period.

8 The Legal Services Commissioner received 33 complaints against barristers in the first reporting period.

2.3 Disciplinary investigations

The Legal Services Commissioner received 1547 complaints during the year that involved a disciplinary complaint: this number is the sum of the disciplinary complaints and mixed complaints (see Table 2). All disciplinary complaints are carefully examined at the outset. Often this will involve communication with the complainant to clarify the complaint or to seek further information. The legal practitioner is also advised of the complaint.

The Legal Services Commissioner is required to investigate each disciplinary complaint, except where it is dismissed under section 4.2.10 or withdrawn by the complainant. Before commencing an investigation, the Legal Services Commissioner must decide whether there is jurisdiction and any issues that require an investigation. There are prescribed circumstances where a complaint may be closed without investigation and where this occurs the Legal Services Commissioner will often speak to the complainant and always provides written reasons to the parties.

Table 6 – Investigations by LSC and investigations referred to PIBs

Table 6 shows the number of investigations commenced by the Legal Services Commissioner during the year and the number of investigations referred to a prescribed investigatory body.⁹

	Total
Investigations referred to LIV	303 ¹⁰
Investigations referred to BAR	15 ¹¹
Investigations to be handled in entirety by LSC	378
Total	696¹²

The reason the number of investigations commenced during the year does not equal the number of disciplinary complaints received is due to various factors, including: where a complaint is dismissed pursuant to section 4.2.10, no investigation will commence; where a complaint is a duplicate complaint, no investigation will commence; and where a complaint is withdrawn, an investigation may not be commenced.

9 The Law Institute and the Victorian Bar both had other investigations on foot during the year which had been referred by the Legal Services Commissioner in the previous financial year.

10 The Law Institute was also referred an additional 69 investigations, where the complaints were received in the previous financial year. This brings the total number of investigations referred to the Law Institute during the year to 372.

11 The Victorian Bar was also referred an additional three investigations, where the complaints were received in the previous financial year. This brings the total number of investigations referred to the Victorian Bar during the year to 18.

12 While this number represents the number of investigations commenced, in some cases, for example where a practitioner has died after receipt of the complaint, the complaint has been dismissed pursuant to s4.2.10 before the investigation was completed.

2.4 What were the new complaints about?

Complaints generally include a number of allegations against a legal practitioner or law practice. Complainants are not always able to clearly articulate what their real issue is. The investigation officers employed by the Legal Services Commissioner critically evaluate each complaint.

Table 7 – Allegations made

Table 7 shows in general terms what allegations were made in the complaints received during the year. The number of allegations far exceeds the number of new complaints made, as a complaint will often include a number of different allegations.

Nature of Allegation	Total
Abusive/Rude	58
Advertising	6
Breach of Act, rules, court order or undertaking	57
Communication with client - including failure to return calls, give progress reports	209
Communication with other party	6
Confidentiality breach	16
Conflict of interest	109
Costs communication - including failure to comply with s3.4.9 of the Act	78
Costs/Bills	898
Court system	6
Debts - including practitioner's failure to pay	37
Delays	134
Dishonest/ Mised	134
Documents - including retention and lost	143
Duress/ Pressure/ Intimidation	79
Instructions - including failure to comply	118
Negligence - including bad case handling	466
Sexual impropriety	1
Trust money - including failure to account, mismanagement of funds	166
Other disciplinary issues	66

The most frequently made allegation in complaints relates to costs and bills. This is followed by negligence and communication problems.

Part A *continued*

2.5 What areas of law featured in the new complaints?

Often the areas of law that feature in complaints are those that affect an individual's private affairs (eg family law, wills and probate). When an individual consults a legal practitioner about these matters there is a lot at stake both financially and emotionally.

Table 8 – Areas of law in complaints

Table 8 shows in general terms the areas of law that featured in complaints made during the year.

Area of Law	Total
Administrative	53
Banking	2
Building – Commercial	23
Building – Residential	45
Civil Liberties	7
Commercial	250
Company	20
Conveyancing	251
Crimes Compensation	9
Criminal	109
Debt Collection	99
Defamation	8
Equal Opportunity	7
Family/Defacto	435
Immigration	15
Industrial Relations	50
Insolvency	13
Leasing	51
Mortgages	34
Motor Vehicle Repairs/Claims	17
Personal Injury – Industrial	6
Personal Injury – Motor Vehicle Accident	24
Personal Injury – Other	38
Planning	7
Probate & Estate	206
Taxation	7
Wills	46
Workers Compensation	90
Other	131
Total	2053

Consistent with complaints data across Australia, the area of law most often involved in complaints was family law. The following areas were also highly represented: commercial law, probate and estate, and conveyancing.

2.6 Files closed

The Legal Services Commissioner closed 2101¹³ files during the year.¹⁴ This includes files opened in the previous financial year and closed during this year.

Table 9 – Files closed

Table 9 shows the number of complaint files closed by type of complaint.

Civil	Disciplinary	Mixed*	Total
614	1222**	265	2101

* Civil & Disciplinary

** The number of disciplinary complaints includes complaints that may contain civil elements but are categorised as disciplinary complaints because the civil issues are unable to be handled by the Legal Services Commissioner. For example, a complaint that contains both a disciplinary complaint and a potential costs dispute will be categorised as a disciplinary complaint if the complainant fails to lodge the unpaid disputed amount with the Legal Services Commissioner.

The Legal Services Commissioner closed 485 files in the first reporting period, made up of 128 civil complaints, 309 disciplinary complaints, and 48 mixed files.

2.7 Time taken to investigate and close disciplinary files

The Legal Services Commissioner closed 1487 complaints during the year that involved a disciplinary matter. This number is the sum of the disciplinary files closed and the mixed files closed (see Table 9). Table 10 shows the time taken to investigate those disciplinary complaints.

Table 10 – Time taken to investigate

Table 10 shows the time taken to investigate disciplinary complaints by reference to solicitors and barristers.

Days taken to close file	<30	31-60	61-90	91- 120	>120	Total
Disciplinary – Solicitor	471	167	143	94	521	1396
Disciplinary – Barrister	31	12	12	8	28	91
Total	502 (33.7%)	179 (12%)	155 (10.4%)	102 (6.9%)	550 (37%)	1487

While the majority of disciplinary complaints are closed within 90 days of receipt, a significant number take longer.¹⁵ This is because of the often complex nature of investigations and the need for careful consideration (see Parts 2.1.3 and 2.1.6).¹⁶

13 Note also that the Legal Services Commissioner closed 449 files under the old Act (see Part B, Table 20). This means that the Legal Services Commissioner closed 2550 files during the year, close to 50 files each week.

14 As at 30 June 2006, there were 730 complaints outstanding.

15 Similarly, the majority of civil complaints are closed within 90 days of receipt.

16 In the first reporting period, the majority of files closed were closed within 60 days. On 30 June 2006, the office had been open less than seven months.

Part A *continued*

2.8 Outcomes of complaints

The Legal Services Commissioner closed 2101 files during the year. This includes files opened in the previous financial year. The following tables show the specific outcomes of these files.

Table 11 – Civil complaints outcomes

The Legal Services Commissioner closed 614 civil complaints files during the year. Table 11 shows how and why these files were closed.

Outcomes:	No.
LSC settled the civil dispute between practitioner & client (includes where client satisfied with practitioner's response and withdrew complaint)	230 ¹⁷
LSC was unable to settle the civil dispute & parties were advised of their right to apply to VCAT	137 ¹⁸
Complainant failed to lodge unpaid disputed costs	39
Complaint made out of time	48
Complaint involved costs dispute which exceeded \$25,000	11
Complaint about Family Court costs (and referred to Family Court)	26
Complaint did not contain enough information (eg. did not include complainant's details)	6
Complainant failed to provide further information when requested	30
Complaint made before (or subject of another complaint)	10
Complaint not one that the LSC has power to deal with (eg. matter has already been dealt with/should be dealt with by a court)	23
Complaint lacked legal substance (etc) (eg. dispute already settled)	24
Practitioner had already issued debt collection proceedings	30
Total	614

17 The Legal Services Commissioner settled 21 civil disputes in the first reporting period.

18 The Legal Services Commissioner was unable to settle 11 civil disputes in the first reporting period.

Table 12 – Disciplinary complaints outcomes

The Legal Services Commissioner closed 1222 disciplinary complaint files during the year. Some of these files were closed following an investigation, some were closed after an investigation had commenced but before it was finalised, and some were closed without investigation (see Part 2.1 for discussion). Table 12 shows how and why these files were closed.

Outcomes:	No.
LSC formed view that VCAT likely to find practitioner guilty of a disciplinary breach (see Tables 14, 15 & 16 for details of action taken)	41 ¹⁹
LSC formed view that VCAT unlikely to find practitioner guilty of a disciplinary breach	386 ²⁰
Complainant satisfied with practitioner's explanation & withdrew complaint	80
Complaint made out of time	26
Complaint made before (or subject of another complaint)	56
Complaint did not contain enough information (eg. did not include complainant's details)	5
Complainant failed to provide further information when requested	45
Complaint lacked legal substance (etc) (eg. alleged conduct appropriate) ²¹	214
Complaint about practitioner/client relationship and duties but made by third party ²²	180
LSC formed the view that complaint required no further investigation (eg. practitioner not obliged to accept instructions from complainant)	77
Complaint not one that the LSC has power to deal with (eg. Involves question of law and better dealt with by a court)	107
Practitioner deceased and/or not located	5
Total	1222

19 In the first reporting period, there were no complaints closed where the Legal Services Commissioner considered the Tribunal likely to find a practitioner guilty of a disciplinary breach.

20 In the first reporting period, the Legal Services Commissioner considered the Tribunal unlikely to find a practitioner guilty of a disciplinary breach on 14 occasions.

21 For example, a complaint may be about a solicitor refusing to accept instructions from the consumer. However, a solicitor is not obliged to accept instructions and the conduct is appropriate. The complaint therefore lacks legal substance.

22 For example, a complaint may be made about a practitioner charging too much by a person who is not a client of that practitioner.

Tables 13A and 13B – Mixed complaints (civil & disciplinary complaints) outcomes

The Legal Services Commissioner closed 265 files during the year that involved both a civil complaint and a disciplinary complaint (mixed complaint). Most mixed files have two outcomes – a civil outcome and a disciplinary outcome. However, some mixed files have only one outcome, for example where a complainant has failed to provide further information to the Legal Services Commissioner and it therefore cannot be handled.

Table 13A Mixed complaints – two outcomes

Table 13A shows the outcome of mixed complaints where there were two outcomes.

Disciplinary outcome	Civil outcome		Total
	Dispute settled	Dispute not settled	
LSC formed view that VCAT likely to find practitioner guilty of a disciplinary breach	9	15	24
LSC formed view that VCAT unlikely to find practitioner guilty of a disciplinary breach	54	102	156
Total	63	117	180

Table 13B – Mixed complaints – one outcome

Table 13B shows the outcome of mixed complaints where there was only one generic outcome.

Generic outcome	Total
Practitioner deceased and/or not located	2
Complaint made before (or subject of another complaint)	12
Complaint did not contain enough information	3
Complainant failed to provide further information when requested	34
Complaint made out of time (exceeded 6 years)	4
Legal proceedings already on foot	29
Complaint not one that the LSC has power to deal with	1
Total	85

2.9 Disciplinary breach – unsatisfactory professional conduct & professional misconduct

The Legal Services Commissioner closed 65 files during the year where she formed the view that the Tribunal was likely to find the legal practitioner guilty of unsatisfactory professional conduct or professional misconduct (this number is the sum of the findings in the disciplinary complaints and mixed complaints closed: see Tables 12 and 13A).

The following Tables show what action was taken where the Legal Services Commissioner was satisfied that there was a reasonable likelihood that the Tribunal would find the legal practitioner guilty of unsatisfactory professional conduct or professional misconduct. They include three additional files that remain open because the conduct referred to the Tribunal is in relation to the legal practitioner's failure to respond to the Legal Services Commissioner (and so total number of files involving a disciplinary breach is 68).

2.9.1 Finding of unsatisfactory professional conduct likely

Where the Legal Services Commissioner forms the view that the Tribunal is likely to find a legal practitioner guilty of unsatisfactory professional conduct, there are a number of options open to her. This includes taking no further action against the legal practitioner if that legal practitioner is generally competent and diligent, and there has been no substantiated complaint made about the legal practitioner in the last five years.

Table 14 – Unsatisfactory professional conduct

Table 14 shows the number and type of disciplinary actions taken by the Legal Services Commissioner where she was satisfied that there was a reasonable likelihood that the Tribunal would find the legal practitioner guilty of unsatisfactory professional conduct.

LSC decided to apply to VCAT for a disciplinary order	1
LSC reprimanded practitioner	17
LSC cautioned practitioner	11
Practitioner found generally competent & diligent and so no further action	34
LSC asked practitioner to pay compensation	1
Total	64

Table 15 – Applications to VCAT – unsatisfactory professional conduct

Table 15 details the application (see Table 14) made by the Legal Services Commissioner to the Tribunal where satisfied that there was a reasonable likelihood that the Tribunal would find the legal practitioner guilty of unsatisfactory professional conduct.

Applicant	Charges	Current status
LSC	Unsatisfactory professional conduct: contravention of Rule 37 of Professional Conduct & Practice Rules 2005, attempting to charge for storage or retrieval of documents without the client agreeing in writing to such a charge being made.	Hearing date fixed

2.9.2 – Finding of professional misconduct likely

Where the Legal Services Commissioner forms the view that the Tribunal is likely to find a legal practitioner guilty of professional misconduct, she **must** refer the matter to the Tribunal for a disciplinary order.

Table 16 – Applications to VCAT – professional misconduct

Table 16 shows the number and type of applications made to the Tribunal during the year, where the Legal Services Commissioner was satisfied that there was a reasonable likelihood that the Tribunal would find the legal practitioner guilty of professional misconduct.

Of the applications made to the Tribunal, three relate to files that remain open. The reason these files remain open is because the substantive issue, that is the allegations made in the complaint, have not yet been finalised. Instead, the legal practitioners are being charged with failing to respond to the Legal Services Commissioner in relation to the complaint.

Applicant	Charges	Current status
LSC (LSC file remains open)	Professional misconduct: contravention of s4.4.11(1)(a), failing to comply with requests for a written explanation of conduct; contravention of s4.4.11(1)(b), failing to provide file.	Hearing date fixed
LSC (LSC file remains open)	Professional misconduct: contravention of Rule 7.3.1 of Professional Conduct & Practice (Amendment) Rules 2003, failing to respond to requirement to make available complainant's files; contravention of s4.4.11(1)(a), failing to comply with a request for an explanation of conduct and documents regarding a complaint.	Hearing date fixed
LSC (LSC file remains open)	Professional misconduct: contravention of s4.4.11(1)(a), failing to comply with a request for a written explanation of conduct.	Hearing date fixed
LSC	Professional misconduct: making false representations on a Guarantee, misconduct at common law.	Hearing date fixed

2.10 Complaints outstanding

The Legal Services Commissioner is constantly receiving and investigating complaints. Accordingly, there is never a point at which all complaints are finalised and closed.

Table 17 – Complaints outstanding

Table 17 shows the number of complaints outstanding at the end of the year, and the number of days since they were received.

Days since receipt of complaint	<30	31-60	61-90	91- 120	>120	Total
Civil Dispute	31	22	15	13	31	112
Disciplinary	63	64	39	31	154	351
Mixed (Civil & Disciplinary)	37	27	14	19	122	219
Total	131	113	68	63	306	682

See Parts 2.1.3, 2.1.5 and 2.1.6 for discussion about the work involved in processing complaints and the reasons as to why some complaints take longer than others to finalise.

3. Delegations

The Legal Services Commissioner may delegate some of the functions of her office to an employee or to a prescribed person. Both the Law Institute and the Victorian Bar are prescribed persons.

Table 18 – Delegations

Table 18 lists all of the delegations made by the Legal Services Commissioner as in force at the end of the year. This includes delegations to internal and external persons.

Date of Delegation	Delegate	Functions Delegated
28 December 2005	Director, Investigations Legal Services Commissioner	<p>Part 4.2 of the <i>Legal Profession Act 2004</i> Section 4.2.8 – notification of a complaint to a law practice or an Australian legal practitioner Section 4.2.9 – requirement for further information from complainant Section 4.2.10 – power to summarily dismiss a complaint</p> <p>Part 4.3, Division 2 of the <i>Legal Profession Act 2004</i> Section 4.3.3 – lodgement of disputed costs Section 4.3.4 – dealing with lodged costs Section 4.3.5 – attempt to resolve civil dispute Section 4.3.6 – notice where civil dispute is not likely to be resolved, or is unsuitable for resolution Section 4.3.7 – notice where dispute resolution fails</p> <p>Part 4.3, Division 3 of the <i>Legal Profession Act 2004</i> Section 4.3.9 – appointment of mediator Section 4.3.13 – power to dismiss complaint where complainant fails to attend mediation, and requirement to provide notice to complainant where law practice or Australian legal practitioner fails to attend mediation</p> <p>Part 4.3, Division 4 of the <i>Legal Profession Act 2004</i> Section 4.3.15 – notice about unresolved disputes</p> <p>Part 4.4, Division 3 of the <i>Legal Profession Act 2004</i> Section 4.4.7 – investigation of disciplinary complaint Section 4.4.8 – investigation without complaint Section 4.4.9 – referral of disciplinary complaint to prescribed investigatory body for investigation Section 4.4.10(3) – powers following receipt of a report from a prescribed investigatory body Section 4.4.11 – requiring practitioner, law practice and others to provide information and documents Section 4.4.12 – investigation to be conducted expeditiously Section 4.4.13(1) – powers following investigation Section 4.4.13(3)(b) – power to reprimand or caution practitioner Section 4.4.13(3)(c) – power to take no further action Section 4.4.13(4) – power to require compensation Section 4.4.13(5) – obligation to take no further action Section 4.4.13(6) – power to rely on recommendation in a report of a prescribed investigatory body Section 4.4.14 – notice of decision</p> <p>Part 4.4, Division 7 of the <i>Legal Profession Act 2004</i> Section 4.4.33 – request to another jurisdiction to investigate complaint or conduct Section 4.4.34 – request from another jurisdiction to investigate complaint or conduct Section 4.4.36 – co-operation with corresponding authorities</p>

Part A *continued*

Date of Delegation	Delegate	Functions Delegated
27 January 2006	Director, Investigations Legal Services Commissioner	Part 4.2 of the <i>Legal Profession Act 2004</i> Section 4.2.7 – time limits for complaints Part 6, Schedule 2 to the <i>Legal Profession Act 2004</i> Clause 6.1– current disputes to continue to be dealt with in accordance with the <i>Legal Practice Act 1996</i> Clause 6.2 – current complaints to be dealt with in accordance with the <i>Legal Practice Act 1996</i> Clause 6.3 – current investigations to be conducted in accordance with the <i>Legal Practice Act 1996</i> Clause 6.4 – reviews outstanding under <i>Legal Practice Act 1996</i> to be dealt with in accordance with the <i>Legal Practice Act 1996</i>
1 February 2007	Manager Complaints & Investigations – External, Legal Services Commissioner	Section 4.4.9(1) of the <i>Legal Profession Act 2004</i> – refer a disciplinary complaint to a prescribed investigatory body
1 February 2007	Manager Complaints & Investigations – Internal, Legal Services Commissioner	Section 4.4.9(1) of the <i>Legal Profession Act 2004</i> – refer a disciplinary complaint to a prescribed investigatory body
1 February 2007	Victorian Bar	Clause 6.1, Schedule 2 to the <i>Legal Profession Act 2004</i> Current disputes to continue to be dealt with in accordance with the <i>Legal Practice Act 1996</i> . The delegation does not include the functions set out in sections 125(1) and (2), 126(2) and 128 of the <i>Legal Practice Act 1996</i> .
1 February 2007	Victorian Bar	Clause 6.2 and 6.3, Schedule 2 to the <i>Legal Profession Act 2004</i> Current complaints to be dealt with in accordance with the <i>Legal Practice Act 1996</i> . Current investigations to be conducted in accordance with the <i>Legal Practice Act 1996</i> . This delegation does not include the functions set out in sections 141, 142, 143, 151 and 152 of the <i>Legal Practice Act 1996</i> .
1 February 2007	Victorian Bar	Part 4.3, Division 2 of the <i>Legal Profession Act 2004</i> Section 4.3.5(1) – must attempt to resolve civil dispute Section 4.3.5(3) – may require law practice or legal practitioner to provide relevant documents or information
1 February 2007	Law Institute	Clause 6.1, Schedule 2 to the <i>Legal Profession Act 2004</i> Current disputes to continue to be dealt with in accordance with the <i>Legal Practice Act 1996</i> . The delegation does not include the functions set out in sections 125(1) and (2), 126(2) and 128 of the <i>Legal Practice Act 1996</i> .
1 February 2007	Law Institute	Clause 6.2 and 6.3, Schedule 2 to the <i>Legal Profession Act 2004</i> Current complaints to be dealt with in accordance with the <i>Legal Practice Act 1996</i> . Current investigations to be conducted in accordance with the <i>Legal Practice Act 1996</i> . This delegation does not include the functions set out in sections 141, 142, 143, 151 and 152 of the <i>Legal Practice Act 1996</i> .
1 February 2007	Law Institute	Part 4.3, Division 2 of the <i>Legal Profession Act 2004</i> Section 4.3.5(1) – must attempt to resolve civil dispute Section 4.3.5(3) – may require law practice or legal practitioner to provide relevant documents or information

Table 19 – Delegations revoked

Table 19 lists all of the delegations revoked by the Legal Services Commissioner during the year, and the reasons for the revocation.

Date of Delegation	Date of Revocation	Delegate	Functions Delegated (Revoked)	Reason for Revocation
18 January 2006	1 February 2007	Victorian Bar	<p>Part 4.3, Division 2 of the <i>Legal Profession Act 2004</i></p> <p>Section 4.3.5(1) – must attempt to resolve civil dispute</p> <p>Section 4.3.5(3) - may require law practice or legal practitioner to provide relevant documents or information</p>	Delegation revoked and remade as part of delegations audit - so as to correct reference to the Act.
18 January 2006	1 February 2007	Victorian Bar	<p>Clause 6.1, Schedule 2 to the <i>Legal Profession Act 2004</i></p> <p>Current disputes to continue to be dealt with in accordance with the <i>Legal Practice Act 1996</i>. The delegation does not include the functions set out in sections 125(1) and (2), 126(2) and 128 of the <i>Legal Practice Act 1996</i>.</p>	Delegation revoked and remade as part of delegations audit. The condition imposed in delegation needed to be extended.
18 January 2006	1 February 2007	Victorian Bar	<p>Clause 6.2 and 6.3, Schedule 2 to the <i>Legal Profession Act 2004</i></p> <p>Current complaints to be dealt with in accordance with the <i>Legal Practice Act 1996</i>. Current investigations to be conducted in accordance with the <i>Legal Practice Act 1996</i>. This delegation does not include the functions set out in sections 141, 142, 143, 151 and 152 of the <i>Legal Practice Act 1996</i>.</p>	Delegation revoked and remade as part of delegations audit. The condition imposed in delegation needed to be extended.
18 January 2006	1 February 2007	Law Institute	<p>Part 4.3, Division 2 of the <i>Legal Profession Act 2004</i></p> <p>Section 4.3.5(1) – must attempt to resolve civil dispute</p> <p>Section 4.3.5(3) - may require law practice or legal practitioner to provide relevant documents or information</p>	Delegation revoked and remade as part of delegations audit – so as to correct reference to the Act.
18 January 2006	1 February 2007	Law Institute	<p>Clause 6.1, Schedule 2 to the <i>Legal Profession Act 2004</i></p> <p>Current disputes to continue to be dealt with in accordance with the <i>Legal Practice Act 1996</i>. The delegation does not include the functions set out in sections 125(1) and (2), 126(2) and 128 of the <i>Legal Practice Act 1996</i>.</p>	Delegation revoked and remade as part of delegations audit. The condition imposed in delegation needed to be extended.
18 January 2006	1 February 2007	Law Institute	<p>Clause 6.2 and 6.3, Schedule 2 to the <i>Legal Profession Act 2004</i></p> <p>Current complaints to be dealt with in accordance with the <i>Legal Practice Act 1996</i>. Current investigations to be conducted by the Legal Services Commissioner in accordance with the <i>Legal Practice Act 1996</i>. This delegation does not include the functions set out in sections 141, 142, 143, 151 and 152 of the <i>Legal Practice Act 1996</i>.</p>	Delegation revoked and remade as part of delegations audit. The condition imposed in delegation needed to be extended.

1. General information about complaints and disputes

All complaints and disputes which had been made under the *Legal Practice Act 1996* (**the old Act**), and which were not finalised on 12 December 2005, were taken over by the Legal Services Commissioner.

A complaint under the old Act was defined as a complaint about the conduct of a legal practitioner or firm (cf disciplinary complaints under the *Legal Profession Act 2004*).

A dispute was defined as:

- » a dispute in relation to legal costs not exceeding \$15,000;
- » a claim that a person has suffered pecuniary loss as a result of an act or omission by a legal practitioner or firm; or
- » any other genuine dispute between a person and a legal practitioner or law firm.

The following statistical data covers complaints and disputes made under the old Act and dealt with during the year pursuant to the transitional provisions of the *Legal Profession Act 2004*.

On 30 June 2006, there were 514 complaint and dispute files open and 53 review files open.

2. Complaints & disputes

2.1 Files closed

On 12 December 2005, the Legal Services Commissioner took over 719 open complaint and dispute files from the Legal Ombudsman, Law Institute and the Victorian Bar. As at 30 June 2006, there were 514 complaint and dispute files outstanding.

Table 20 shows the number of files that were closed by the Legal Services Commissioner during the year in accordance with the old Act.

Table 20 – Old Act files closed

	Complaint	Dispute	Complaint & Dispute (mixed)	Total
Solicitor	231	34	177	442
Barrister	4	0	3	7
Total	235	34	180	449

2.2 Outcomes of complaints & disputes

The following Tables show the outcomes of complaints and disputes made under the old Act and handled by the Legal Services Commissioner during the year. The relevant decision was made in accordance with the old Act pursuant to the transitional provisions in the *Legal Profession Act 2004*.

2.2.1 Dispute outcomes

Table 21 – Dispute outcomes

There were 34 dispute files closed during the year. Table 21 shows the outcomes of those disputes.

Outcomes:	No.
LSC settled dispute between practitioner & client (includes where client satisfied with practitioner's response and withdrew complaint)	12
LSC was unable to settle the dispute & parties were advised of their right to apply to VCAT	14
Disputant failed to lodge unpaid disputed costs	2
Dispute made out of time	1
Dispute lacked legal substance (etc) (eg. dispute already settled)	4
Other jurisdiction	1
Total	34

2.2.2 Complaint outcomes

Table 22 – Complaint outcomes

There were 235 complaint files closed during the year. Table 22 shows the outcomes of those complaints.

Outcomes:	No.
LSC formed view that VCAT likely to find practitioner guilty of a disciplinary breach	54
LSC formed view that VCAT unlikely to find practitioner guilty of a disciplinary breach	154
Complainant satisfied with practitioner's explanation & withdrew complaint	6
Practitioner deceased and/or not located	6
Complaint lacked legal substance (etc) (eg. alleged conduct appropriate)	14
Another procedure	1
Total	235

Part B *continued*

2.2.3 Mixed files outcomes

There were 180 mixed files closed during the year. A mixed file is a file that contains both a complaint and a dispute. Most mixed files have two outcomes – a complaint outcome and a dispute outcome. However, some mixed files have only one outcome, for example where the file is an exact replica of an earlier complaint/dispute and is accordingly dismissed.

Table 23A – Mixed file – two outcomes

Table 23A shows the outcomes of the mixed files that had two outcomes.

Complaint outcomes	Disputes outcomes		Total
	Dispute settled	Dispute not settled	
LSC formed view that VCAT likely to find practitioner guilty of a disciplinary breach	6	28	34
LSC formed view that VCAT unlikely to find practitioner guilty of a disciplinary breach	14	127	141
Total	20	155	175

Table 23B – Mixed file – one outcome

Table 23B shows the outcomes of the mixed files that had only one outcome.

Generic outcome	Total
Replica of earlier complaint/dispute	2
Matter subject of court proceeding	1
Complaint/dispute lacked legal substance	2
Total	5

2.3 Disciplinary breach – unsatisfactory conduct & misconduct

After an investigation of a complaint is completed, the Legal Services Commissioner must deal with the matter in accordance with section 151 of the old Act.

2.3.1 Finding of unsatisfactory conduct likely

If the Legal Services Commissioner is satisfied that there is a reasonable likelihood that the Tribunal would find the legal practitioner or firm guilty of unsatisfactory conduct, the Legal Services Commissioner may –

- » bring a charge in the Tribunal against the legal practitioner or firm;
- » with the consent of the legal practitioner or firm, reprimand or caution the legal practitioner or firm;
- » take no further action if satisfied that the practitioner or firm is generally competent and diligent and there has been no substantiated complaint about the practitioner or firm within the last five years; or
- » require the practitioner or firm to pay compensation instead of bringing a charge in the Tribunal.

The Legal Services Commissioner must bring a charge in the Tribunal against the legal practitioner or firm if satisfied that there is a reasonable likelihood that the Tribunal would find the legal practitioner or firm guilty of misconduct.

Table 24 – Unsatisfactory conduct

Table 24 shows the number and type of disciplinary actions taken by the Legal Services Commissioner where she was satisfied that there was a reasonable likelihood that the Tribunal would find the legal practitioner or firm guilty of unsatisfactory conduct.

LSC decided to bring charge	1
LSC reprimanded practitioner	34
LSC cautioned practitioner	12
Practitioner found generally competent & diligent so no further action	35
Total	82

2.3.2 Finding of misconduct likely

In addition to the 82 complaints where the Legal Services Commissioner found unsatisfactory conduct (see Table 24), there were six complaints where the Legal Services Commissioner was satisfied that there was a reasonable likelihood that the Tribunal would find the legal practitioner or firm guilty of misconduct. This brings the total number of complaints closed where there was some type of disciplinary consequence to **88**.

2.4 Applications to VCAT

The following Tables show the applications made to the Tribunal in relation to the disciplinary conduct of a legal practitioner. Some of these cases have been determined and some have not.

Table 25 – Applications to VCAT during the period 1/7/06 to 30/6/07 which were determined by VCAT in the period 1/7/06 to 30/6/07

Practitioner	Who brought charges?	Charges	Finding	Orders made
Blazevic, Maria	LSC	Misconduct: breach of s149(1)(b), failure to respond to a request for information and documents regarding a complaint.	Orders dated 19/6/07 Misconduct	Practitioner reprimanded; ordered to pay LSC costs fixed at \$2000; stay of 3 months in relation to costs.

Table 26 – Applications made before 1/7/06 which were determined by VCAT in the period 1/7/06 to 30/6/07

Practitioner	Who brought charges?	Charges	Finding	Orders made
Perkins, David	BAR	Misconduct: contravention s178(1), unauthorised receipt of trust monies	Orders dated 13/11/06 Misconduct	Practising certificate suspended for 6 months from date of order; pay Bar's costs; quantum of costs and orders in relation to payment and assessment reserved; liberty to apply.
Kirby, Andrew	BAR	Contravention of Bar Rule 42, suggesting serious misconduct against another without reasonable grounds for any belief that evidence provided basis for that suggestion, and without reasonable grounds for believing that the matters covered by the suggestion were well founded (x2).	Orders dated 21/8/06 Unsatisfactory conduct	No further action to be taken against practitioner; question of costs reserved.
Molyneux, Clarinda	BAR	Contravention of Bar Rule 42, suggesting serious misconduct against another without reasonable grounds for any belief that evidence provided basis for that suggestion, and without reasonable grounds for believing that the matters covered by the suggestion were well founded (x2); contravention of Bar Rule 38(a), cross-examined witness so as to suggest serious misconduct against another without reasonable grounds capable of supporting such a belief; contravention of Bar Rule 31, suggesting abuse of process by another party without taking care to ensure suggestion was reasonably justified by material available.	Orders dated 22/8/06 Unsatisfactory conduct	Practitioner reprimanded; question of costs reserved.

Table 27 – Applications to VCAT in the period 1/7/06 to 30/6/07 awaiting hearing and/or final orders by VCAT

* The legal practitioner who is the subject of the charges is not named until a decision of misconduct or unsatisfactory conduct is made by the Tribunal.

Practitioner	Who brought charges?	Charges	Current status
Case 1	LSC	Misconduct: while bankrupt & failing to make contributions to trustee & failing to pay income tax on further income earned, made payments to defacto partner enabling her to acquire property; providing misleading statement to Bar Ethics Committee re complaint.	Directions hearing date fixed
Case 2	LSC	Unsatisfactory Conduct: contravention of Rule 37 of Professional Conduct & Practice Rules 2005 by refusing to forward a will and powers of attorney without payment and thereby making a charge for retention of documents, and retrieval of documents without client agreeing to such a charge being made.	Hearing date fixed
Case 3	LSC	Misconduct: contravention of Rule 19(1) of Trust Account Practice Rules, failure to maintain separate ledger account re each matter and each client; contravention Rule 19(1) of Trust Account Practice Rules, failure to maintain a specific separate trust ledger re purchase and sale of land by client; applying trust moneys held obo vendor before release by purchaser; contravention s174(3), withdrawing and applying trust money without consent of person for whom money held; misappropriation of trust moneys (x2); having a deficiency in trust account; contravention of Rule 32 of Trust Account Practice Rules, failing to notify auditor of existence of a deficiency; contravention s.194(1), failure to produce documents for purpose of inspection by Inspector (x2); failure to keep accurate trust account records (x2); withdrawing trust moneys otherwise than in accordance with s174(3); contravention of Rule 8(1)(a) of Professional Conduct & Practice Rules 2005, borrowing moneys personally from client; contravention of Rule 11.1.1 of Professional Conduct & Practice Rules 2003, borrowing moneys personally from client (x2); creating conflict of interest between personal interests and interests of client (x3).	Awaiting hearing date
Case 4	LSC	Misconduct: preparing and signing a document for use in court knowing it to be false and misleading.	Awaiting hearing date
Case 5	LSC	Misconduct: acting in a situation of conflict of interest (x3); failing to lodge caveat to protect client's interests; failing to register mortgage notwithstanding instructions and disbursement authority for payment; failing to pay monies notwithstanding disbursement authority.	Awaiting hearing date
Case 6	LSC	Misconduct: took steps to dishonestly enable the payment of stamp duty to be evaded.	Awaiting hearing date

Table 28 – Applications to VCAT made prior to 1/7/06 awaiting hearing and/or final orders by VCAT at 30/6/07

* The legal practitioner who is the subject of the charges is not named until a decision of misconduct or unsatisfactory conduct is made by the Tribunal.

Practitioner	Who brought charges?	Charges	Current status
Case 1	LIV	Misconduct/ Unsatisfactory Conduct contravention of: s182(e)(i) by failing to provide or retain receipts in accordance with rule 15 of Trust Account Practice Rules (x2); rule 16(5) of Trust Account Practice Rules by failing to retain duplicate bank deposit slip; rule 16(2) of Trust Account Practice Rules by failing to retain duplicate bank deposit slip; rule 17(7) of Trust Account Practice Rules by failing to record particulars on cheque butts (x2); rule 19 of Trust Account Practice Rules by failing to record sufficient particulars in ledger accounts (x2); rule 21(5) of Trust Account Practice Rules, by failing to reconcile all trust ledger accounts (x2); s188(1)(a), by having deficiencies in trust account (x2); rule 26 of Trust Account Practice Rules, by failing to maintain a Register of Interests (x2); s182(2)(e)(ii), by failing to keep accurate records in manner so as to be audited (x10).	Awaiting hearing date
Case 2	LIV	Misconduct/ Unsatisfactory Conduct: common law misconduct; contravention of s64(a)(i) and (d)(ii) by failing to act honestly and fairly in client's best interests and failing to avoid a conflict of interest; contravention of s182(2)(e)(ii), by failing to keep accurate records in manner so as to be audited (x2).	Awaiting hearing date
Case 3	LIV	Misconduct: contravention of s324(1), by permitting unqualified person to engage in legal practice (x7).	Awaiting hearing date
Case 4	LIV	Misconduct: contravention of rule 10(1A)(i) of the Professional Conduct and Practice Rules 2000, by acting so as to secure payment for fees from the unauthorised proceeds of sale of client's possessions, and contrary to rule 30 of the Trust Account Practice Rules, by failing to provide statement of account; misconduct at common law, by acting without client's authority and gaining access to client's home and removing possessions.	Mention hearing date fixed
Case 5	LIV	Misconduct: contravention of s174, by failing to deposit trust moneys as soon as practicable (x2); contravention of s182(1), by failing to keep accurate records (x5); contravention of s188(1), by having deficiency in trust account (x28); contravention of s194(6), by obstructing inspector (x3); misconduct at common law (x3); contravention of s86; charging grossly excessive fees; contravention of rule 8 of the Professional Conduct and Practice Rules, by borrowing money from client.	Mention hearing date fixed

2.5 Reviews

As at 30 June 2006, there were 53 open review files. All of these files were reviewed and closed during the year. Table 30 shows the outcome of review files completed during the year.

Table 30

Outcomes	Total
LIV/Bar's decision affirmed	47
LIV/Bar's decision varied	4
Request for review withdrawn	2
Total	53

2.6 Complaints & disputes outstanding

As at 30 June 2006, there were 514 open complaint and dispute files. Table 31 shows how many files were open and outstanding as at **30 June 2007**. There were no review files outstanding.

Table 31

File Type	Total
Conduct complaint	48
Dispute	0
Mixed (Conduct & Dispute)	17
Total	65

Supplementary Information

Freedom of Information Act 1982

The Legal Services Commissioner is subject to the *Freedom of Information Act 1982* (the FOI Act).

The FOI Act provides every person with a legally enforceable right to access documents in the possession of an agency, subject to certain exceptions. Because of the sensitive nature of the majority of documents held by the Legal Services Commissioner, an exemption often applies to preclude access.

New requests

During the period 1 July 2006 to 30 June 2007, there were six valid new requests made under the FOI Act.

Requests processed during the year

The Legal Services Commissioner processed seven requests during the year: the six new requests and also one that was made in the previous financial year.

Of the six new requests, access was granted in part in relation to one and access was refused in full in relation to four. In relation to the remaining one new request, the documents requested were unable to be located.

The Legal Services Commissioner decided to grant access in part to the documents requested in the previous financial year.

Applications to VCAT during the year

Where the Legal Services Commissioner refuses to provide access to a document requested under the FOI Act, a person may apply to the Tribunal (VCAT) for review of the decision.

Four applications for review were made to VCAT in the period 1 July 2006 to 30 June 2007. There was also one application to VCAT which had not been heard and determined as at 30 June 2006. Of these five applications, three were withdrawn and two were awaiting hearing and determination as at 30 June 2007.

Compliance with Building Act 1993

In accordance with the requirements of the Minister for Finance, the annual report must include a statement about compliance with the building and maintenance provisions of the *Building Act 1993*, for publicly owned buildings controlled by the Legal Services Commissioner. However, the Legal Services Commissioner does not own or control any government buildings.

National Competition Policy

In 1995, all Australian governments (Federal, State and Territory) agreed to review and, where appropriate, reform all existing legislative restrictions on competition. Under National Competition Policy, the guiding legislative principle is that legislation, including future legislative proposals, should not restrict competition unless it can be demonstrated that:

- » the benefits of the restriction to the community as a whole outweigh the costs; and
- » the objectives of the legislation can only be achieved by restricting competition.

The Legal Services Commissioner continues to comply with the requirements of the National Competition Policy.

Whistleblowers Protection Act 2001

The *Whistleblowers Protection Act 2001* applies to the office of the Legal Services Commissioner. Procedures have been developed to deal with disclosures made under the *Whistleblowers Protection Act 2001* to the Legal Services Commissioner (consistent with the State Ombudsman's model procedures). The procedures can be obtained from the Legal Services Commissioner's website.

The Legal Services Commissioner did not receive any disclosures under the *Whistleblowers Protection Act 2001* during the year.

Implementation of the Victorian Industry Participation Policy

In October 2003, the Victorian Parliament passed the *Victorian Industry Participation Policy Act 2003*, which requires public bodies and departments to report on the implementation of the Victorian Industry Participation Policy (VIPP). Departments and public bodies are required to apply VIPP in all tenders over \$3million in metropolitan Melbourne, and \$1million in regional Victoria.

For the reporting period, the Legal Services Commissioner did not commence any contracts to which the VIPP applies.

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Operating Statement for the period ended 30 June 2007

	Notes	30.06.07 \$	30.06.06 \$
Income			
Revenue	2(a)	6,568,923	3,372,046
Total Income		6,568,923	3,372,046
Expenses			
Employee benefits expenses	2(b)	3,968,760	1,326,694
Supplies and services	2(c)	2,197,419	1,296,580
Consultants and legal expenses	2(d)	420,832	173,389
Other expenses from ordinary activities	2(e)/14	327,771	198,358
Depreciation and amortisation expense	2(f)	11,847	2,850
Transition expenses	2(g)	29,293	118,364
Total Expenses		6,955,922	3,116,235
Net result from continuing operations		(386,999)	255,811
Net result for the period		(386,999)	255,811

The above operating statement should be read in conjunction with the accompanying notes.

Balance Sheet as at 30 June 2007

	Notes	30.06.07 \$	30.06.06 \$
Current Assets			
Cash and cash equivalents	3,16	972,724	958,300
Receivables	4,16	356,026	596,645
Prepayments		5,706	2,243
Total Current Assets		1,334,456	1,557,188
Non Current Assets			
Motor Vehicles	5	38,468	50,315
Total Non Current Assets		38,468	50,315
Total Assets		1,372,924	1,607,503
Current Liabilities			
Payables	6,16	833,750	944,501
Provisions	7	597,729	316,589
Interest Bearing Liabilities	10	25,042	11,554
Total Current Liabilities		1,456,521	1,272,644
Non Current Liabilities			
Provisions	7	4,330	10,748
Interest Bearing Liabilities	10	13,895	38,934
Total Non Current Liabilities		18,225	49,682
Total Liabilities		1,474,746	1,322,326
Net Assets		(101,822)	285,177
Equity			
Accumulated Surplus/(Deficit)		(131,188)	255,811
Contributed Capital		29,366	29,366
Total Equity	8	(101,822)	285,177
Contingent Assets and Liabilities	9		

The above statement should be read in conjunction with the accompanying notes.

Statement of Recognised Income and Expense for the period ended 30 June 2007

	Notes	30.06.07 \$	30.06.06 \$
Net result from continuing operations		(386,999)	255,811
Total recognised income and expenses for the period	8	(386,999)	255,811

Cash Flow Statement for the period ended 30 June 2007

	Notes	30.06.07 \$	12.12.05 to 30.06.06 \$
Cash Flows from operating activities			
Receipts from other entities		5,627,427	2,835,734
Receipt from operations		1,196,675	
Payments to suppliers and employees		(6,783,567)	(2,050,710)
Goods and Services Tax recovered from ATO		567,439	122,187
Goods and Services Tax paid to ATO		(604,247)	(180,044)
Interest received		22,248	4,430
Net Cash Flows/(Outflows) from operating activities	15	25,975	731,597
Cash Flows from investing activities			
Receipts/(Payments) for motor vehicles		(11,551)	(2,677)
Net Cash Inflow/(Outflow) from investing activities		(11,551)	(2,677)
Cash Flows from financing activities			
Cash and cash equivalents transferred from the Legal Ombudsman		-	229,380
Net Cash Inflow/(Outflow) from financing activities		-	229,380
Net Increase/(Decrease) in Cash Held		14,424	958,300
Cash and cash equivalents at the beginning of the reporting period		958,300	-
Cash and cash equivalents at the end of the reporting period	3	972,724	958,300

The above statements should be read in conjunction with the accompanying notes.

Notes to the Financial Statements for the period ended 30 June 2007

Note 1 Summary of accounting policies

a) Statement of compliance

This general-purpose financial report has been prepared on an accrual basis in accordance with the *Financial Management Act 1994*, Australian Accounting Standards and Interpretations. Accounting Standards include Australian equivalents to International Financial Reporting Standards Board (A-IFRS').

b) Basis of preparation

The financial report has been prepared on the basis of historical cost, except for the valuation of certain non-current assets and financial instruments. Cost is based on the fair values of the consideration given in exchange for assets.

In the application of A-IFRS management is required to make judgments, estimates and assumptions about carrying values of assets and liabilities that are not readily apparent from other sources. The estimates and associated assumptions are based on historical experience and various other factors that are believed to be reasonable under the circumstances, the results of which form the basis of making the judgments. Actual results may differ from these estimates.

The estimates and underlying assumptions are reviewed on an ongoing basis. Revisions to accounting estimates are recognised in the period in which the estimate is revised if the revision affects only that period or in the period of the revision and future periods if the revision affects both current and future periods.

Judgments made by management in the application of A-IFRS that have significant effects on the financial statements and estimates with a significant risk of material adjustments in the next year are disclosed throughout the notes in the financial statements.

Accounting policies are selected and applied in a manner which ensures that the resulting financial information satisfies the concepts of relevance and reliability, thereby ensuring that the substance of the underlying transaction or other event is reported.

c) Reporting entity

The Legal Services Commissioner commenced on 12 December 2005 following the proclamation of the *Legal Profession Act 2004*.

The *Legal Professional Act 2004* (Part 8) provided that all rights, property and assets and all debts, liabilities and obligations of the Legal Ombudsman immediately before the commencement day transfer to the Legal Services Commissioner.

Notes to the Financial Statements for the period ended 30 June 2007

Note 1 Summary of accounting policies continued

The net transfer on 12 December 2005 was as follows:

Current Assets	
Cash and cash equivalents	229,380
Prepayments	15,298
Receivables	6,907
Total Current Assets	251,585
Non Current Assets	
Property, Plant and Equipment	-
Total Non Current Assets	-
Total Assets	251,585
Current Liabilities	
Payables	52,710
Employee Benefits	169,509
Total Current Liabilities	222,219
Non Current Liabilities	
Employee Benefits	-
Total Non Current Liabilities	-
Total Liabilities	222,219
Net Assets	29,366
Equity	
Contributed Capital	302,706
Accumulated Surplus/(Deficit)	(273,340)
Amounts transferred as contributions by owners to the Legal Services Commissioner	29,366

d) Objectives and funding

The objectives of the Commissioner are:

- To ensure that complaints against Australian legal practitioners and disputes between law practices or Australian legal practitioners and clients are dealt with in a timely and effective manner;
- To educate the legal profession about issues of concern to the profession and to consumers of legal services;
- To educate the community about legal issues and the rights and obligations that flow from the client-practitioner relationship.

The Commissioner is funded from the Legal Services Board Public Purpose Fund as per Section 6.7.7 of the *Legal Professional Act 2004*.

Notes to the Financial Statements for the period ended 30 June 2007

Note 1 Summary of accounting policies continued

e) Events after reporting date

Assets, liabilities, income and expenses arise from past transactions or other past events. Where the transactions result from an agreement between the Commissioner and other parties, the transactions are only recognised where the agreement is irrevocable at or before balance date. Amounts are recognised in the financial statements for events after balance date and the date that the statements are authorized for issue where information about the event existed at balance date and are considered to have a material impact on the results.

f) Goods and services tax

Revenues, expenses and assets are recognised net of the amount of goods and services tax (GST), except where the amount of GST incurred is not recoverable from the Australian Taxation Office (ATO). In these circumstances the GST is recognised as part of the cost of acquisition of the asset or as part of an item of the expense.

The net amount of GST recoverable from, or payable to, the ATO is included as part of receivables or payables in the Balance Sheet.

Cash flows are included in the cash flow statement on a gross basis. The GST component of cash flows arising from investing and financing activities which is recoverable from or payable to the ATO is classified as operating cash flows.

g) Revenue recognition

Revenue (including interest income) is brought to account on receipt, control or official notification.

The *Legal Profession Act* section 6.7.7 states that the Legal Services Commissioner must be paid such amount as determined by the Board to meet the expenses of, and discharge the liabilities incurred by, the Commissioner in performing functions under this Act during the year.

All income received by the Legal Services Commissioner is paid into the Operating Account with the exception of Disputed Costs which are paid into a separate account.

h) Expenses

Depreciation and amortisation

Depreciation is provided on motor vehicles on a straight line basis, at rates which allocate their costs over the estimated useful life of the asset.

The expected useful lives of the vehicles are 3 years. The assets' residual values and useful lives are reviewed, and adjusted if appropriate, at each balance sheet date.

Employee Benefits

(i) Provision is made for benefits accruing to employees in respect of wages and salaries, annual leave, and long service leave when it is probable that settlement will be required and they are capable of being measured reliably.

Provisions made in respect of employee benefits are to be measured on their expected settlement. Provisions which are expected to be settled within 12 months are measured at their nominal values using the remuneration rate expected to apply at the time of settlement. Provisions which are not expected to be settled within 12 months are measured at the present value of the estimated future cash outflows to be made by the Legal Services Commissioner in respect of services provided by employees up to reporting date.

Notes to the Financial Statements for the period ended 30 June 2007

Note 1 Summary of accounting policies continued

h) Expenses continued

Employee Benefits continued

Regardless of the expected timing of settlement, provisions made in respect of employee benefits are classified as a current liability unless there is an unconditional right to defer the settlement of the liability for at least 12 months after the reporting date, in which case it would be classified as a non-current liability. Provisions made for annual leave and unconditional long service leave would be classified as a current liability where the employee has a present entitlement to the benefit. A non-current liability would include long service leave entitlements accrued for employees with less than 7 years of continuous service.

(ii) Superannuation

The amount charged to the operating statement in respect of superannuation represents the contributions made by the Legal Services Commissioner to the superannuation funds in respect of Legal Services Commissioner staff.

The Commissioner does not recognise defined benefit liability in respect of the superannuation plan because it has no legal or constructive obligation to pay future benefits relating to its employees; its only obligation is to pay superannuation contributions as they fall due. The Department of Treasury and Finance administers and discloses the State's defined benefit liabilities in its financial report.

Recharge services

The Legal Services Board to the Legal Services Commissioner

The Board charges the Commissioner for premises, depreciation and insurance on the basis of staff numbers and floor space.

The Legal Services Commissioner to the Legal Services Board

The Commissioner charges the Board for salaries and on-costs based on the time spent by Commissioner staff on Board work.

i) Assets

Cash and cash equivalent

For the purposes of the statement of cash flows, cash includes cash on hand and short term deposits that are readily convertible to cash on hand and are subject to an insignificant risk of changes in value, net of outstanding cheques yet to be presented by the Legal Services Commissioner's suppliers and creditors.

Financial assets

Short term investments held for trading purposes are classified as current assets and are stated at fair value, with any resultant gain or loss recognised in profit or loss.

Short term investments are investments that have maturities of one year or less and are stated at the lower of cost and net realisable value.

Leased assets

Leases are classified as finance leases whenever the terms of the lease transfer substantially all the risks and rewards of ownership to the lessee. All other leases are classified as operating leases. Operating lease payments are charged as an expense in the period in which they are incurred.

Assets held under finance leases are recognised as assets of the Commissioner at their fair value or, if lower, at the present value of the minimum lease payments, each determined at the inception of the lease. The corresponding liability to the lessor is included in the balance sheet as a finance lease obligation.

Notes to the Financial Statements for the period ended 30 June 2007

Note 1 Summary of accounting policies continued

i) **Assets continued**

Leased assets continued

Lease payments are apportioned between finance charges and reduction of the lease obligation so as to achieve a constant rate of interest on the remaining balance of the liability. Finance charges are charged directly against income.

Finance lease assets are amortised on a straight-line basis over the estimated useful life of the asset.

Operating lease payments are recognised as an expense in a straight-line basis over the lease term, except where another systematic basis is more representative of the time pattern in which economic benefits from the leased asset are consumed.

Non-current physical assets

Assets are initially recorded at cost less accumulated depreciation and impairment.

j) **Liabilities**

Payables

Payables are recognised for amounts to be paid in the future for goods and services received, whether or not billed to the organisation. The amounts reported in the Balance Sheet are their net market value. No interest is paid in respect of payables. Trade payables are ordinarily settled on 30 day terms.

Commitments

Commitments include those operating, capital and other outsourcing commitments arising from non-cancellable contractual or statutory sources and are disclosed at their nominal value

k) **Contingent Assets and Contingent Liabilities**

Contingent assets and contingent liabilities are not recognised in the balance sheet, but are disclosed by way of a note and, if quantifiable, are measured at nominal value.

l) **Comparative figures**

The Legal Services Commissioner was proclaimed on 12 December 2005. Therefore the comparative figures are not a full financial year as they relate to the period 12 December 2005 to 30 June 2006. The presentation and classification of expenditure is consistent with the previous reporting period.

m) **Rounding of amounts**

Amounts in the financial report have been rounded to the nearest dollar.

n) **Contributions by owners (contributed capital)**

Consistent with UIG Interpretation 1038 *Contributions by Owners Made to Wholly-Owned Public Sector Entities* appropriations for additions to net assets have been designated as contributions by owners. Other transfers that are in the nature of contributions or distributions have also been designated as contributions by owners.

Notes to the Financial Statements
for the period ended 30 June 2007

	30.06.07 \$	30.06.06 \$
Note 2 Net result from continuing operations		
Income		
(a) Revenue		
• Legal Services Board	5,350,000	2,950,000
Other		
• Recovery of Legal costs	650	100
• Interest	22,248	4,430
• Service Agreement between Legal Services Board and Legal Services Commissioner	1,186,643	417,422
• Other	9,382	94
Revenue from continuing operations	6,568,923	3,372,046
Expenses		
(b) Employee Benefits		
• Salaries	3,040,355	966,315
• Superannuation	269,263	82,790
• Temporary Staff	151,327	205,008
• Provisions	274,722	1,659
• Payroll & Workcover	193,476	52,553
• Training	30,226	10,701
• Other	9,391	7,668
	3,968,760	1,326,694
<i>Less Recharge from Service Agreement with the Legal Services Board</i>	<i>(1,754,046)</i>	<i>(531,881)</i>
	2,214,714	794,813
(c) Supplies and Services		
Cost of services delegated/referred to the Law Institute of Victoria and Victorian Bar Inc.		
• Cost of Services - LIV	1,915,019	1,149,483
• Cost of Services - BAR	282,400	147,097
	2,197,419	1,296,580
(d) Consultants & Legal expenses		
• Investigations	402,351	122,769
• Legal Other	4,017	8,206
• Consultants	14,464	42,414
	420,832	173,389

Notes to the Financial Statements
for the period ended 30 June 2007

	30.06.07 \$	30.06.06 \$
Note 2 Net result from continuing operations continued		
(e) Other expenses from ordinary activities		
• Motor Vehicle expenses	22,409	10,504
• Community and education expenses	35,984	11,039
• Telephone and fax expenses	8,390	17,880
• IT expenses	15,231	55,229
• General administration expenses	98,301	41,356
• Ex gratia expenses	-	1,101
• Travel and accommodation expenses	30,984	5,368
• Audit Fees	15,700	3,900
• Bank Fees	4,436	1,190
• Postage, printing and stationery	96,336	50,791
	327,771	198,358
(f) Depreciation and amortisation expense		
• Motor Vehicles	11,847	2,850
	11,847	2,850
(g) Transition expense		
• Human Resources	12,725	142
• Communications	16,568	-
• Temporary Premises	-	118,222
	29,293	118,364

NOTE 3 Cash and cash equivalents

Cash on Hand	1,000	1,000
Cash at Bank		
• Legal Services Commissioner	639,641	767,032
• Disputed Costs	332,083	190,268
Total	972,724	958,300

Notes to the Financial Statements
for the period ended 30 June 2007

	30.06.07 \$	30.06.06 \$
NOTE 4 Receivables		
Current		
• GST Recoverable	36,808	64,763
• Accrued Income	319,218	531,882
Total	356,026	596,645

Note 5 Motor vehicles

Motor Vehicle (Under finance lease)		
• At Cost	53,165	53,165
• Less: Accumulated Depreciation	(14,697)	(2,850)
Total	38,468	50,315

Note 6 Payables

• Accrued expenses	417,621	693,159
• PAYG	84,032	61,071
• Disputed Costs	332,097	190,271
Total	833,750	944,501

Notes to the Financial Statements for the period ended 30 June 2007

	30.06.07 \$	30.06.06 \$
Note 7 Provisions		
Current		
• Employee benefits (note 7A)	597,729	316,589
	597,729	316,589
Non-current		
• Employee benefits (note 7A)	4,330	10,748
	4,330	10,748

Note 7a Employee entitlements

Current		
All annual leave and long service leave entitlements representing 7+ years of continuous services		
• Short-term employee benefits, that fall due within 12 months after the end of the period measured at nominal value	357,836	173,601
• Other long-term employee benefits that do not fall due within 12 months after the end of the period measured at present value	239,893	142,988
	597,729	316,589
Non-current		
• Long service leave representing less than 7 years of continuous service measured at present value	4,330	10,748
	4,330	10,748

	No.	No.
Employee Numbers		
Average (FTE) number of employees during the financial year	48	32
As explained in note 1 h(i) the amount for long service leave is measured at the present value. The following assumptions were adopted in measuring present values:		
• Weighted average rates of increase in annual employee entitlements to settlement of the liabilities	4.50%	4.75%
• Weighted average discount rates	5.78%	5.84%
• Weighted average terms to settlement of the liabilities	12 years	12 years

Notes to the Financial Statements for the period ended 30 June 2007

	30.06.07 \$	30.06.06 \$
Note 8 Equity and movements in equity		
Contributions by Owners		
• Balance at beginning of financial year	29,366	-
• Contribution by owners to the Legal Services Commissioner	-	29,366
Balance at end of financial year	29,366	29,366
Accumulated Surplus		
• Balance at beginning of financial year	255,811	-
• Net Result	(386,999)	255,811
Balance at end of financial year	(131,188)	255,811

Note 9 Contingent liabilities and contingent assets

There are no contingent liabilities or contingent assets at balance date not provided for.

- -

Note 10 Interest bearing liabilities

	Minimum future lease payments 30.06.07	Present value of minimum future lease payments 30.06.07	Minimum future lease payments 30.06.06	Present value of minimum future lease payments 30.06.06
Finance leases				
Not longer than 1 year	27,097	25,042	14,436	11,554
Longer than 1 year and not longer than 5 years	13,969	13,895	41,066	38,934
Longer than five years	-		-	
Minimum lease payments	41,066	38,937	55,502	50,488
Less future finance charges	(2,129)		(5,014)	
Present value of minimum lease payments	38,937	38,937	50,488	50,488

Notes to the Financial Statements for the period ended 30 June 2007

Note 11 Responsible persons

The responsible Minister during the period 1 July 2006 to 30 June 2007 was

The Hon. Rob Hulls MP, Attorney-General.

During the period the following Ministers were Acting Attorney-General:

The Hon. Bob Cameron MP 1 July 2006 to 16 July 2006

The Hon. John Lenders MP 23 December 2006 to 1 January 2007

The Hon. Tim Pallas MP 20 January 2007 to 21 January 2007

The Hon. Bob Cameron MP 22 January 2007 to 11 February 2007

The Hon. John Lenders MP 22 June 2007 to 30 June 2007

Note 12 Remuneration of executives and accountable officer

Accountable Officer: Ms V Marles.

Section 6.3.4 of the *Legal Profession Act 2004* states that the Legal Services Commissioner is the Chief Executive Officer of the Legal Services Board.

The Executive Officers during the period 1 July 2006 to 30 June 2007 were Ms Diana Gillespie and Ms Janet Cohen. Mr David Forbes was Executive Officer during the period 1 July 2006 to 26 March 2007 and Mr Adam Cockayne was Executive Officer during the period 26 March 2007 to 30 June 2007.

Income Band	Total	Base	Total	Base
	Remuneration	Remuneration	Remuneration	Remuneration
	30.06.07	30.06.07	30.06.06	30.06.06
	No.	No.	No.	No.
Executive and Accountable Officers Remuneration over \$100,000				
Income of:				
\$100,000 - \$109,999				
\$110,000 - \$119,999			1	1
\$120,000 - \$129,999				
\$130,000 - \$139,999				
\$140,000 - \$149,999	2	2		
Over \$150,000	1	1		
Total remuneration	526,216	526,216	118,767	118,767

Notes to the Financial Statements for the period ended 30 June 2007

	30.06.07	30.06.06
	\$	\$

Note 13 Related party transactions

During the period 1 July 2006 to 30 June 2007 the following related party transaction occurred:

- As set out in Note 1(h) and other notes there are recharges between the Legal Services Board and the Legal Services Commissioner

-	-
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Note 14 Ex-gratia payments

There were no payments made under Section 4.2.16 of the *Legal Profession Act 2004*

-	1,101
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	30.06.07	30.06.06
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Note 15 Reconciliation of the net result for the period to net cash flows from operating activities

Net result for the reporting period	(386,999)	255,811
Depreciation and Amortisation	11,847	2,850
Changes in net assets and liabilities:		
• (Increase)/decrease in prepayments	(3,463)	13,056
• (Increase)/decrease in receivables	240,619	(589,738)
• Increase/(decrease) in annual leave	184,090	62,690
• Increase/(decrease) in long service leave	90,632	95,138
• Increase/(decrease) in payables	(110,751)	891,790
Net Cash Inflow from Operating Activities	25,975	731,597

Notes to the Financial Statements for the period ended 30 June 2007

Note 16 Financial instruments

The entity's exposure to interest rate risk and the effective weighted average interest rate for classes of financial assets and financial liabilities is set out below:

	Note	Fixed interest maturing in:				Non Interest Bearing	Total 30.06.07
		Floating Interest \$	1 Year or Less	Over 1 to 5 years	More than 5 years		
Financial Assets							
Cash and cash equivalents	3	971,724				1,000	972,724
Receivables	4					356,026	356,026
Total		971,724				357,026	1,328,750
Weighted Average Interest Rate		5.78%					
Financial Liabilities							
Payables	6					833,750	833,750
Total						833,750	833,750

	Note	Fixed interest maturing in:				Non Interest Bearing	Total 30.06.06
		Floating Interest \$	1 Year or Less	Over 1 to 5 years	More than 5 years		
Financial Assets							
Cash and cash equivalents	3	957,300				1,000	958,300
Receivables	4					596,645	596,645
Total		957,300				597,645	1,554,945
Weighted Average Interest Rate		5.31%					
Financial Liabilities							
Payables	6					944,501	944,501
Total						944,501	944,501

Notes to the Financial Statements for the period ended 30 June 2007

Note 17 Superannuation

	30.06.07 Contribution	30.06.06 Contribution	30.06.07 Outstanding	30.06.06 Outstanding
	\$	\$	\$	\$
Superannuation (employee contributions)				
Defined benefit plans:				
State Superannuation Fund – revised and new	5,268	-	-	-
Defined contribution plans:				
• Vic Super	131,215	40,870	-	-
• Legal Super	26,905	991	-	-
• MLC Masterkey	21,234	15,248	-	-
• CARE	17,480	2,754	-	-
• Other Superannuation funds	67,161	22,927	-	-
Total Superannuation Contribution	269,263	82,790	-	-

Note 18 Subsequent events

There are no subsequent events to report.

Accountable Officer's and Chief Finance Officer's Declaration

LEGAL SERVICES COMMISSIONER

*Notes to the financial statements
for the period ended 30 June 2007*

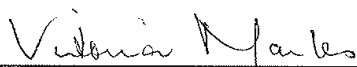
ACCOUNTABLE OFFICER'S AND CHIEF FINANCE OFFICER'S DECLARATION

We certify that the attached financial statements for the Legal Services Commissioner have been prepared in accordance with Standing Direction 4.2 of the *Financial Management Act 1994*, applicable Financial Reporting Directions, Australian accounting standards and other mandatory professional reporting requirements.

We further state that, in our opinion, the information set out in the Operating Statement, Balance Sheet, Statement of Recognised Income and Expenses, Cash Flow Statement, and notes to and forming part of the financial statements, presents fairly the financial transactions during the period ended 30 June 2007 and financial position of the Legal Services Commissioner as at 30 June 2007.


We are not aware of any circumstances that would render any particulars included in the financial statements to be misleading or inaccurate.

Melbourne



V. Marles
Commissioner

Legal Services Commissioner
Melbourne



D. Gillespie
Chief Financial Officer

Legal Services Commissioner
Melbourne

Dated: 24/9/07.



Victorian Auditor-General's Office

INDEPENDENT AUDIT REPORT

Legal Services Commissioner

To the Members of the Parliament of Victoria and the Commissioner

Matters Relating to the Electronic Presentation of the Audited Financial Report

This auditor's report for the financial year ended 30 June 2007 relates to the financial report of the Legal Services Commissioner included on its web site. The Commissioner is responsible for the integrity of the web site. I have not been engaged to report on the integrity of the web site. The auditor's report refers only to the statements named below. An opinion is not provided on any other information which may have been hyperlinked to or from these statements. If users of this report are concerned with the inherent risks arising from electronic data communications, they are advised to refer to the hard copy of the audited financial report to confirm the information included in the audited financial report presented on this web site.

The Financial Report

The accompanying financial report for the year ended 30 June 2007 of the Legal Services Commissioner which comprises the operating statement, balance sheet, statement of recognised income and expense, cash flow statement, a summary of significant accounting policies and other explanatory notes to and forming part of the financial report, and the accountable officer's and chief finance officer's declaration has been audited.

The Responsibility of the Commissioner for the Financial Report

The Legal Services Commissioner is responsible for the preparation and the fair presentation of the financial report in accordance with Australian Accounting Standards (including the Australian Accounting Interpretations) and the financial reporting requirements of the *Financial Management Act 1994*. This responsibility includes:

- establishing and maintaining internal controls relevant to the preparation and fair presentation of the financial report that is free from material misstatement, whether due to fraud or error
- selecting and applying appropriate accounting policies
- making accounting estimates that are reasonable in the circumstances.

Auditor's Responsibility

As required by the *Audit Act 1994*, my responsibility is to express an opinion on the financial report based on the audit, which has been conducted in accordance with Australian Auditing Standards. These Standards require compliance with relevant ethical requirements relating to audit engagements and that the audit be planned and performed to obtain reasonable assurance whether the financial report is free from material misstatement.

1

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Auditing in the Public Interest

VAGO

Victorian Auditor-General's Office

Independent Audit Report (continued)

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial report. The audit procedures selected depend on judgement, including the assessment of the risks of material misstatement of the financial report, whether due to fraud or error. In making those risk assessments, consideration is given to internal control relevant to the Commissioner's preparation and fair presentation of the financial report in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Commission's internal control. An audit also includes evaluating the appropriateness of the accounting policies used, and the reasonableness of accounting estimates made by the Commissioner, as well as evaluating the overall presentation of the financial report.

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

Independence

The Auditor-General's independence is established by the *Constitution Act 1975*. The Auditor-General is not subject to direction by any person about the way in which his powers and responsibilities are to be exercised. The Auditor-General, his staff and delegates comply with all applicable independence requirements of the Australian accounting profession.

Auditor's Opinion

In my opinion, the financial report presents fairly, in all material respects, the financial position of the Legal Services Commissioner as at 30 June 2007 and its financial performance and cash flows for the year then ended in accordance with applicable Australian Accounting Standards (including the Australian Accounting Interpretations), and the financial reporting requirements of the *Financial Management Act 1994*.

MELBOURNE
24 September 2007


D.D.R. Pearson
Auditor-General

2

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Auditing in the Public Interest

Disclosure Index

Disclosure Index

The Report of the Legal Services Commissioner is prepared in accordance with all relevant Victorian legislation. This index has been prepared to facilitate identification of the Commissioner's compliance with the statutory disclosure requirements.

Ministerial Directions

Report of Operations – FRD Guidance

Legislation	Requirement	Page Reference
Charter and Purpose		
FRD 22B	Manner of establishment and the relevant Ministers	2, 55
FRD 22B	Objectives, functions, powers and duties	3
FRD 22B	Nature and range of services provided	3, 6-7
Management and Structure		
FRD 22B	Organisational structure	8
Financial and other information		
FRD 22B	Operational and budgetary objectives and performance against objectives	NIL
FRD 22B	Employment and conduct principles	9
FRD 22B	Occupational Health and Safety	9
FRD 29	Workforce Data disclosures	8-9
FRD 15B	Executive Officer disclosures	8, 55
FRD 22B	Summary of financial results for the year	41-58
FRD 22B	Significant changes in financial position during the year	NIL
FRD 22B	Major changes or factors affecting performance	NIL
FRD 22B	Subsequent events	58
FRD 22B	Application and operation of <i>Freedom of Information Act 1982</i>	40
FRD 22B	Compliance with building and maintenance provisions of <i>Building Act 1993</i>	40
FRD 22B	Statement on National Competition Policy	40
FRD 22B	Application and operation of the <i>Whistleblowers Protection Act 2001</i>	40
FRD 25	Victorian Industry Participation Policy disclosures	40
FRD 22B	Details of consultancies over \$100,000	NIL
FRD 22B	Details of consultancies under \$100,000	NIL
FRD 22B	Disclosure of major contracts	NIL
FRD 24B	Reporting of office-based environmental impacts	NIL
FRD 22B	Statement of availability of other information	6, 7
FRD 10	Disclosure Index	62
FRD 8A	Budget portfolio outcomes	NIL

Financial Statements

Financial Statements required under Part 7 of the FMA

Legislation	Requirement	Page Reference
SD 4.2(f)	Model Financial Report	41-58
SD 4.2(b)	Operating Statement	42
SD 4.2(b)	Balance Sheet	43
SD 4.2(a)	Statement of Changes in Equity	54
SD 4.2(b)	Cash flow statement	44
SD 4.2(c)	Compliance with Australian accounting standards and other authoritative pronouncements	45
SD 4.2(c)	Compliance with Ministerial Directions	55
SD 4.2(d)	Rounding of Amounts	NIL
SD 4.2(c)	Accountable officers declaration	59

Other disclosures in notes to the financial statements

FRD 13	Disclosure of parliamentary appropriations	N/A
FRD 9A	Departmental disclosure of administered assets and liabilities	N/A
FRD 11	Disclosure of ex-gratia payments	56
FRD 21A	Responsible person and executive officer disclosures	55

Legislation

<i>Legal Profession Act 2004</i>	1, 2, 4, 6, 8, 10, 11-31, 32, 45, 46, 47, 55
<i>Freedom of Information Act 1982</i>	40
<i>Building Act 1993</i>	40
<i>Whistleblowers Protection Act 2001</i>	40
<i>Victorian Industry Participation Policy Act 2003</i>	40
<i>Financial Management Act 1994</i>	45, 59, 60
<i>Audit Act 1994</i>	60
<i>Public Administration Act 2004</i>	9

Legal Services **COMMISSIONER**

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