

SUMMARY ANNUAL REPORT 2018

Victorian Legal Services
BOARD + COMMISSIONER


LEGAL PROFESSION
Uniform Law

ABOUT US

The Victorian Legal Services Board and the Victorian Legal Services Commissioner are independent statutory authorities responsible for the regulation of the legal profession in Victoria.

The Board and Commissioner work closely with the Legal Services Council to administer the Legal Profession Uniform Law in Victoria. The Board and Commissioner are accountable to the Victorian Parliament. The following information is a summary of the full 2017-18 annual report, which can be found on our website.

THE VICTORIAN LEGAL SERVICES BOARD

The Board is responsible for a broad range of functions, including:

- issuing, renewing, suspending, cancelling and imposing conditions upon practising certificates;
- maintaining the Victorian legal profession register;
- administering the Public Purpose Fund and the Fidelity Fund;
- monitoring, inspecting and investigating lawyers' trust accounts;
- investigating and determining claims against the Fidelity Fund;
- administering external intervention into law practices;
- providing advice to the Legal Services Council on legal profession rules and policies;
- prosecuting breaches of the *Legal Profession Uniform Law Application Act 2014*, including applying for removal of lawyers' names from the Supreme Court roll where necessary; and
- making grants to enhance the legal system, legal services and legal education.

THE VICTORIAN LEGAL SERVICES COMMISSIONER

The Commissioner is responsible for the receipt and handling of complaints about lawyers in Victoria, including disputes over fees. The Commissioner also seeks to keep lawyers and consumers of legal services informed about issues which affect them.

Fiona McLeay's appointment as the Commissioner was announced by the Attorney-General in September 2017. Her tenure commenced in January 2018. By virtue of her appointment as Commissioner, Fiona also became the Chief Executive Officer of the Board. The Commissioner is the employer of all staff who support the operations of both the Board and the Commissioner.

OUR STATUTORY OBJECTIVES AND VALUES

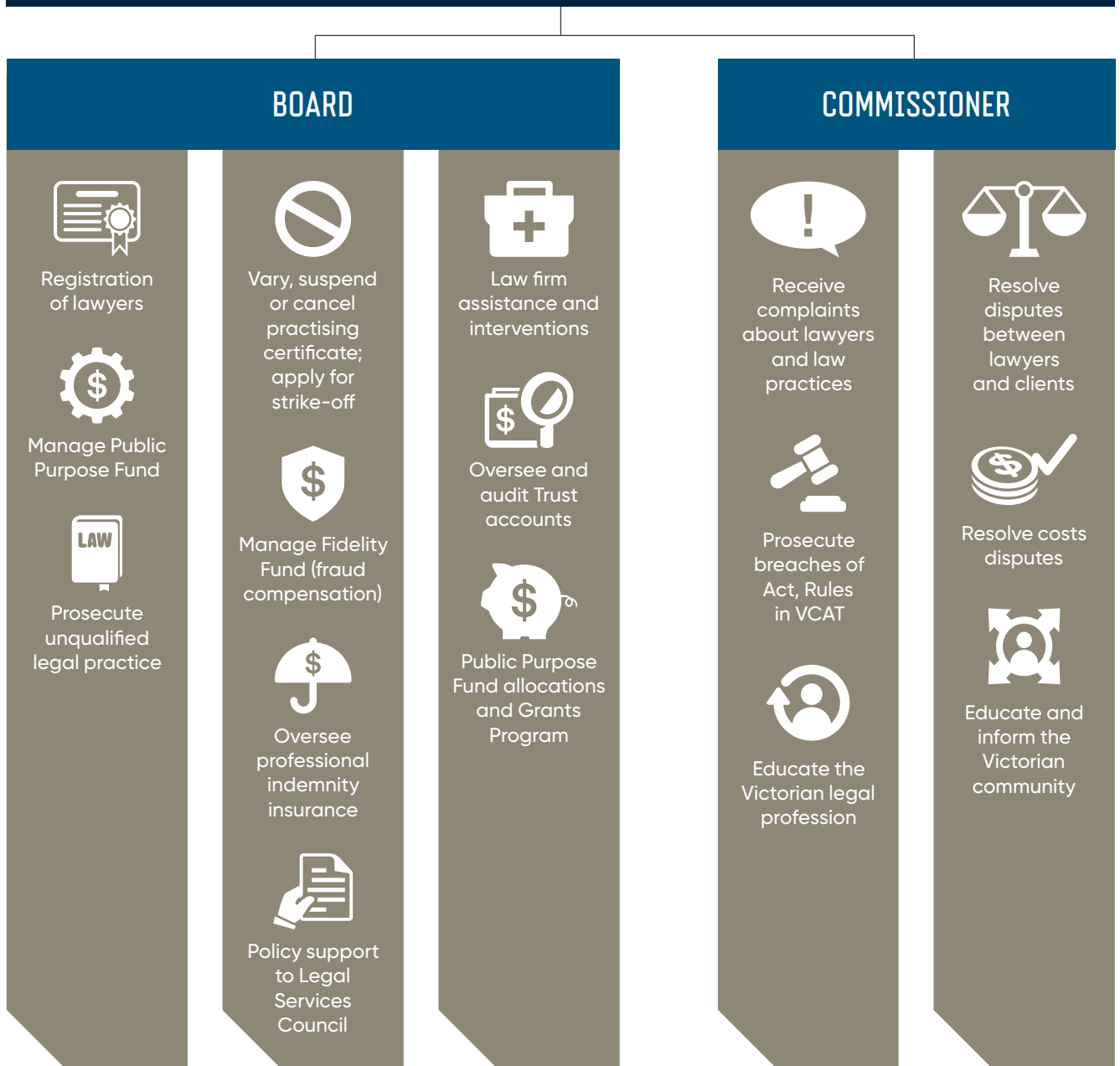
Under the Application Act, the Board has the following statutory objectives:

- to ensure the effective regulation of the legal profession and the maintenance of professional standards;
- to address the concerns of clients of law practices and lawyers through the regulatory system and provide for the protection of consumers of legal services;
- to ensure the adequate management of trust accounts; and
- to contribute to the effective administration of the Legal Profession Uniform Framework through cooperation with other involved entities and jurisdictions.

The Commissioner is responsible for administering the following objectives under the Application Act and the Uniform Law:

- to provide a framework for the timely and effective resolution of disputes or issues between clients and lawyers or law practices;
- to provide a scheme for the discipline of the Australian legal profession, in the interests of the administration of justice and for the protection of clients of law practices and the general public; and
- to monitor, promote and enforce the professional standards, competency and honesty of the Australian legal profession.

VICTORIAN LEGAL SERVICES BOARD + COMMISSIONER



SNAPSHOT OF LEGAL REGULATION IN 2017-18

REGISTERED LAWYERS
IN VICTORIA GREW BY
TO A TOTAL OF

995
22,483



FEMALE LAWYERS MAKE UP

50.4%

OF THE VICTORIAN
LEGAL PROFESSION



213 NEW

INCORPORATED LEGAL PRACTICES
REGISTERED – THE FASTEST
GROWING LAW PRACTICE TYPE,
BRINGING THE TOTAL TO

1,760



23 UNQUALIFIED

LEGAL PRACTICE INVESTIGATIONS COMMENCED;

5 SETS OF CHARGES

LAID IN THE MAGISTRATES COURT;

3 PROSECUTIONS

CONCLUDED WITH COURT ORDERS MADE



\$2.8 MILLION

IN GRANTS PROVIDED TO

8 COMMUNITY

PROGRAMS ACROSS VICTORIA

\$2 MILLION

IN PAYMENTS MADE
TO CLIENTS FROM THE

FIDELITY

FUND





THE BOARD AND
COMMISSIONER
ADDRESSED

3,900

**LAWYERS &
LAW STUDENTS**

IN SEMINARS AND WORKSHOPS

1,675 COMPLAINTS
MADE



19 MATTERS BROUGHT
BEFORE VCAT

**FAMILY AND
DEFACTO LAW**



CONTINUES TO ATTRACT THE HIGHEST
NUMBER OF COMPLAINTS AT

24%



30% OF COMPLAINTS
INVOLVED

LEGAL COSTS

OR BEING

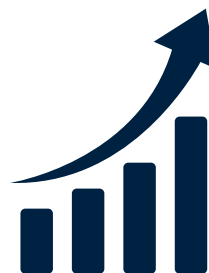
OVERCHARGED

1,701
COMPLAINTS FINALISED,
16%
MORE THAN LAST YEAR



COMPLAINTS CLOSED
WITHIN 30 DAYS

42%
HIGHER



COMPARED TO LAST YEAR



CHAIRPERSON'S REPORT

This has been a year of significant change for the Board, with a new CEO and one new Board member appointed and three new Board members elected.

In late September 2017 we farewelled Michael McGarvie,

Board CEO since 2009. Michael's eight years of service was transformative for the Board in many ways: we modernised our regulatory processes; made significant cuts to red tape, saving time and effort for lawyers; and, of course, transitioned across to the Uniform Law. The Board greatly valued Michael's vision and enthusiasm for improving regulation in Victoria.

Fiona McLeay was appointed to the position of CEO and Commissioner in September 2017, and commenced her term in January 2018. Her wealth of experience in both the private and not for profit sectors gives her a first-hand appreciation of regulation from a lawyer's perspective, as well as a strong understanding and appreciation of consumer needs and the importance of consumer protection. These qualities are an excellent match for the Board's remit, and I look forward to working with Fiona in continuing our work towards a more cost-effective, pro-active and risk-based regulatory model.

In April 2018 the Board held a full election for its three lawyer member positions, whose four-year terms were set to expire on 30 June 2018. The election offered Victorian lawyers an opportunity to have a say in the regulation of the profession by voting for two solicitors and one barrister to sit on the Board. There was very strong interest, with three barristers and 18 solicitors nominating to stand in the election. The successful candidates were Jennifer Batrouney QC for the barrister position, and Liz Harris and Geoff Bowyer for the solicitor positions. I congratulate Jennifer, Liz and Geoff on their elections and look forward to working with them over the next four years.

We continued our work on identifying and responding to trends in mistakes made by lawyers, drawing on the University of Melbourne analysis of our data. Through this process we recognised that principal solicitors with inadequate training in running the business side of their law practice were more likely to get into difficulty. This sometimes had implications for their practice, their mental health and the interests of their clients.

To help them prepare for the challenges of running their own practice, the Board developed a policy requiring all new applicants for a principal practising certificate to demonstrate that they have a minimum level of business management skills before obtaining a principal PC. One way they can show that they have these skills is through the completion of a Practice Management Course, which teaches skills including strategic planning, financial administration, governance and risk management.

This is typical of the educational approach the Board is taking toward risk management in the profession: protecting the interests of consumers by strengthening the capability of the profession to prevent practice and conduct issues arising in the first place. It is pleasing to see aspiring principals already embracing this approach, despite the policy not commencing until January 2019. The success of this initiative could not have been possible without the support of the LIV and the Legal Practitioners' Liability Committee (LPLC), whose assistance in developing both the policy and the course guidelines was invaluable.

Our Grants program celebrated its ten year anniversary this year. The Board has now distributed over \$35 million from the Public Purpose Fund across 200 projects, supporting much needed access to justice, community legal education, legal administration and legal service improvement programs for all Victorians. Clear highlights of this program are the health-justice partnerships and the numerous programs that have gone on to be recognised through industry, community and government awards, or commendations by the Royal Commission into Family Violence.

No matter the profile of the project, all grants have provided real benefits to the target audiences, including such focussed programs as 'Read along Dads', which provides a literacy program for inmates and keeps them in touch with their young children by recording them reading stories. As one participant said, *'Just because you are in jail, it doesn't mean you stop being a dad'*. The benefits here are immediately obvious.

At the end of another year, I offer my sincere thanks to our Board, Fiona McLeay as our new CEO and our staff who all work diligently to deliver the important work the Board does for Victorian lawyers and consumers of legal services, and thank our partners: the LIV; LPLC and the Victorian Bar for assisting us in our work throughout the year.

Fiona Bennett
Chairperson, Victorian Legal Services Board



CEO AND COMMISSIONER'S REPORT

It was a great privilege to be appointed Board CEO and Commissioner after Michael McGarvie stepped down from the role in September 2017. I was initially attracted to this role because it combined

my personal commitment to social justice with my strong belief in the importance of the role that lawyers serve in upholding the rule of law. These past several months have cemented that early view. The work I am immersed in each day reinforces the critical role that fair and responsive legal regulation plays in protecting both lawyers and their clients and thus supporting the administration of justice and strengthening the rule of law.

We have been working on developing ways to support lawyers, particularly those in small suburban and regional practices, who are reaching retirement age, who are ill or otherwise unable to continue working, and who have no clear line of succession for their practice. Together with the LIV and the LPLC, we have developed a contingency and succession planning policy and a suite of resources which will be released in the coming year. In line with our aim to prevent harm, these resources will help lawyers plan ahead so that unexpected life events don't impact negatively on their livelihoods or their clients.

We have also been exploring the changing nature of legal services, and the impact of digital disruption on law practices. This is a growing field, and we expect accelerating changes in the legal service landscape as traditional law practices seek out new ways of attracting and servicing clients. This is especially important as commerce and society become more digitally dependent and clients demand more convenient and cost effective legal services.

As Commissioner, I have noticed that complaints from lawyers alleging sexual harassment by another lawyer are extremely rare, yet anecdotally it appears to be prevalent within the profession. This is a serious concern for the Board and Commissioner – not only because of the breach of ethics and potential criminal conduct, but also for the impact it has on the mental health of those who experience this behaviour.

To address this we are currently laying the groundwork for a significant focus on responding to sexual harassment in the profession, with clear action to be taken in the coming financial year.

To tackle this issue with both the force and the sensitivity it mandates, we are developing a robust policy base, stronger links with the professional associations and support services, and training staff to deal appropriately with the disclosures that we expect will follow.

Notwithstanding this focus, it is worth reflecting on the fact that from 22,438 lawyers, we received 1,675 complaints; the vast majority of which were low-level issues that are quickly resolved. Just 19 matters were brought before the Victorian Civil Administrative Tribunal (VCAT) this year, including the last few matters that arose from disciplinary complaints originally made under the old *Legal Profession Act 2004*. Combined with the 44 disciplinary determinations made in 2017-18, less than 4% of complaints end up with a disciplinary finding.

Many more complaints are resolved in other ways – usually through assisted dispute resolution processes. This is something my office does especially well. The number of complaints finalised within 30 days of their receipt was up 42% up on last year's figure. These are often consumer matters; complaints involving costs disputes or concerns about minor service issues.

Both the lawyer and the client are clear beneficiaries of quick complaint resolution. Our preliminary investigation and informal mediation processes play a major part in this. We have found that once the client's concerns are aired, it is not unusual for a lawyer to offer an apology or provide a better explanation, or for a client to recognise they have misunderstood their lawyer or the legal process and acknowledge nothing untoward has actually happened.

In the vast majority of complaints we see, it is this disconnect between the lawyers' delivery of their service and their clients understanding of what to expect, or what has happened, that leads to problems; not actual wrongdoing. This demonstrates that good communication between a lawyer and his or her client is crucial in ensuring that each understands the other. This in turn supports a healthy and productive relationship; a theme we emphasise in our presentations to groups of lawyers, legal studies students and now in the new Practice Management Courses for prospective law practice principals. It is also something we will be focussing more attention on in the coming year.

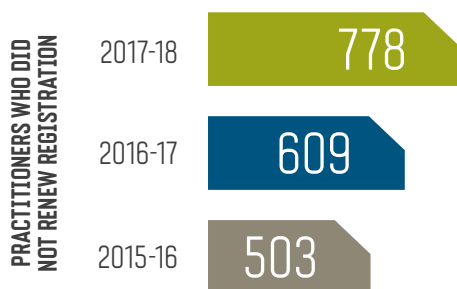
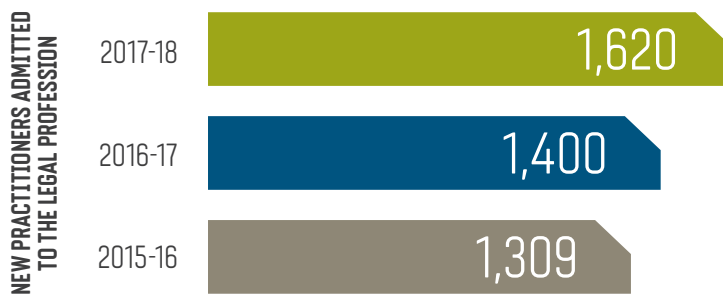
Fiona McLeay
Board CEO and Commissioner

SUMMARY OF OUR ACTIVITIES IN 2017-18

PRACTITIONER STATISTICS

As at 30 June 2018 there were 22,438 lawyers across Victoria; among them were 1,620 new lawyers admitted to practise during the year. In March 2018, the number of female lawyers overtook male lawyers for the first time, and by 30 June accounted for 50.4% of the Victorian profession.

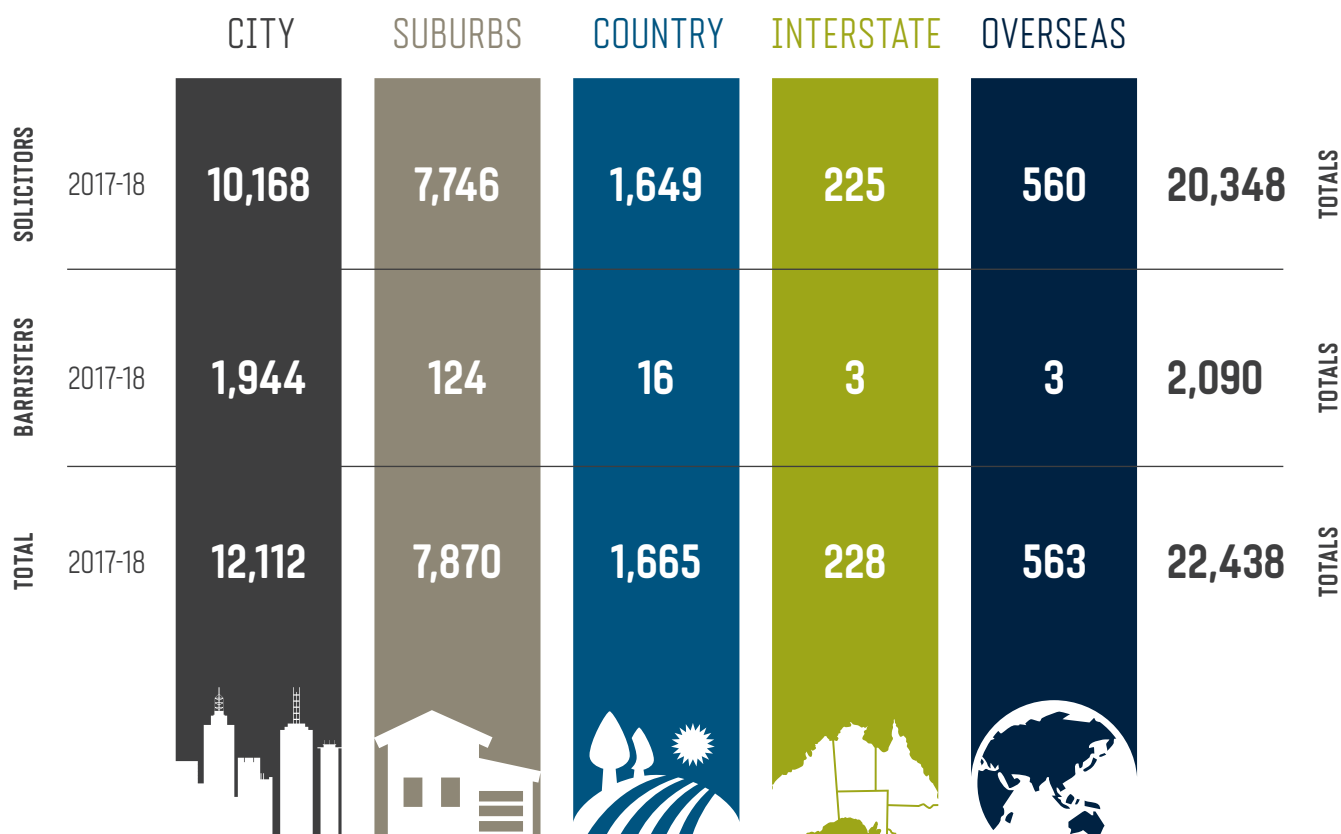
NUMBERS OF LAWYERS REGISTERED IN VICTORIA



LAWYER TYPE AND GENDER

Gender	Type					
	Solicitors		Barristers		Total	
	2016-17	2017-18	2016-17	2017-18	2016-17	2017-18
Male	9,378	9,652	1,471	1,473	10,849	11,125
Female	10,036	10,696	603	617	10,639	11,313
Total	19,414	20,348	2,074	2,090	21,488	22,438

LOCATION OF LAWYERS BY TYPE



POLICY DEVELOPMENT AND SUBMISSIONS

The Board and Commissioner developed a number of new policies during 2017-18:

- The *Grant of Principal Practising Certificate Policy* introduced requirements for lawyers seeking to become a principal of a law practice for the first time;
- The *Risk-Based Regulation of Trust Accounts Policy* established a framework for a targeted risk-based approach to law practices' trust account investigations; and
- The *Contingency and Succession Planning Policy* aims to encourage sole practitioners and sole directors of incorporated legal practices to put in place safeguards to protect their clients, should they become unable to practice due to injury, illness or death.

Submissions were made to the following:

- The Victorian Law Reform Commission's inquiry into litigation funding and group proceedings (class action) arrangements in Victoria;
- The Law Council of Australia's review of the Australian Solicitors' Conduct Rules; and
- The Legal Services Council's draft rules to ban lawyers promoting or operating managed investment schemes, and a new rule providing for the revocation of the appointment of external examiners.

PRACTISING CERTIFICATE FEES REGULATIONS

The Board's extensive Regulatory Impact Statement consultation process concluded in 2017-18 with the Attorney-General approving a new fee structure for practising certificates. These new fees better reflect the cost of regulating the different classes of legal practitioners, and apply to all practising certificates granted from 1 July 2018.

THE FIDELITY FUND

The Board received 20 claims against the Fidelity Fund, totalling \$2.47 million. Over the year, 32 claims were resolved totalling \$2.001 million, including claims received during the previous reporting years. One further claim was approved in 2017-18, but had not been paid out by the end of the year.

FIDELITY FUND CLAIMS IN 2017-18

	2016-17		2017-18	
	No. of claims	Amount \$'000s	No. of claims	Amount \$'000s
Claims received during period	31	1,973	20	2,470
Claim payments made (includes interest) during period	40	2,222	32	2,001
Claims outstanding as at 30 June	25	4,227	14	4,116

NEW APPROACHES TO CHECK COMPLIANCE

Acting on the University of Melbourne's research findings, and in collaboration with the LIV, the Board and Commissioner commenced a new programme of short compliance visits to lawyers, based on their disciplinary and complaints history. The visits encourage lawyers to consider what changes they have made since they received complaints, and assists them to identify whether further areas for change are required.

A separate 'light touch' audit program also commenced, focussing on lawyers with a history of costs complaints. This program requires selected lawyers to provide examples of existing documents they use to explain costs to their clients. This approach is less invasive than a full audit, and assists lawyers to improve their business practices, thereby ensuring their clients are properly informed and helping to avoid complaints.

UNQUALIFIED LEGAL PRACTICE

During the year, the Board commenced 23 new investigations into potential cases of unqualified legal practice. Of the 18 investigations closed, the Board issued five cautions, filed five sets of charges, and concluded three prosecutions in the Magistrates' Court.

COMPLAINTS

The Commissioner is responsible for handling all complaints about Victorian lawyers, including resolving disputes between clients and lawyers or law practices. We work with all parties to ensure the processes are clear, that each party understands what is required of them and that they are informed of the outcomes.

ENQUIRIES

The Commissioner received 6,188 enquiries from both consumers and lawyers. Most enquiries (87%) required only low-level assistance, such as offering support with strategies to help the parties resolve their differences, or an explanation of the Board and Commissioner's functions.

COMPLAINTS RECEIVED

A total of 1,675 complaints were opened during the year; 12.5% higher than the previous year. Of all complaints opened, 57% (952) were 'consumer matters' (involving costs, bills and general service issues), 40% (672) were 'disciplinary matters' (involving the lawyer's alleged conduct or behaviour) and 3% (52) were 'mixed' (involving a combination of both consumer and disciplinary matters).

The profile of complaints remains consistent year to year, with family and defacto law receiving the highest proportion of complaints.

TOP FIVE AREAS OF LAW FEATURES IN NEW COMPLAINTS

Area of law	2017-18
FAMILY/DEFACTO	415 (24%)
CONVEYANCING	195 (12%)
PROBATE/FAMILY PROVISIONS (formerly Probate and estate)	178 (12%)
COMMERCIAL/CORPORATIONS/FRANCHISE (combines previous Commercial, Company, Banking)	138 (8%)
CRIMINAL	85 (5%)

Costs and bills are the most frequently raised issue in complaints, featuring in 30% of all complaints received in 2017-18.

TOP FIVE ALLEGATIONS FEATURED IN NEW COMPLAINTS

Nature of allegation	2017-18
Costs/Bills - overcharging	695 (30%)
Negligence - including bad case handling	413 (18%)
Trust money - including failure to account, mismanagement of funds	129 (6%)
Defective costs disclosure communications	121 (5%)
Dishonest/Misleading	114 (5%)

CONSUMER MATTERS – OUTCOMES

Consumer matters are usually handled using conciliation and mediation techniques. 1,052 consumer matters were closed in 2017-18, most often during a preliminary assessment. Many others are withdrawn by the complainant after the Commissioner assists the parties to recommence communication.

TOP FIVE OUTCOMES FOR CONSUMER MATTERS CLOSED IN 2017-18 (INCLUDING THOSE FROM MIXED COMPLAINTS):

Consumer complaint outcome	2017-18
Informal resolution successful	270
Closure - s277(1)(a) Closed because vexatious, misconceived, frivolous or lacking in substance	154
Preliminary Assessment – resolved	137
Consumer matter – withdrawn	124
Preliminary Assessment – withdrawn	112

DISCIPLINARY COMPLAINTS – OUTCOMES

A total of five complaints were closed under the old *Legal Profession Act 2004*, while a further 695 were closed under the Legal Profession Uniform Law. The majority of complaints were closed at the preliminary assessment stage, usually because the client and the lawyer settled their differences.

TOP FIVE OUTCOMES FOR DISCIPLINARY MATTERS CLOSED IN 2017-18 (INCLUDING THOSE FROM MIXED COMPLAINTS):

Disciplinary investigation outcome	2017-18
Preliminary assessment – withdrawn	167
Closure - s277(1)(a) Vexatious, misconceived, frivolous or lacking in substance	134
Preliminary assessment – resolved	116
Closure - s 277(1)(h) Commissioner formed the view that the complaint could not result in a disciplinary outcome and requires no further investigation	94
Withdrawn - Disciplinary	32

CHARGES BROUGHT AGAINST LAWYERS

The Commissioner brought 30 sets of charges against lawyers in the Victorian Civil and Administrative Tribunal (VCAT); five under the LPA and 25 under the Uniform Law.

COMMISSIONER DETERMINATIONS OF DISCIPLINARY COMPLAINTS

During the year the Commissioner issued 16 reprimands and 28 cautions to lawyers under the Uniform Law. Reprimands are recorded on the Register of Disciplinary Action and remain public for a maximum of five years under most circumstances. The Register can be found on the website.

SUMMARY OF CLOSED COMPLAINTS WHERE THE COMMISSIONER HAS TAKEN ACTION AGAINST THE LAWYER:

File outcomes	2017-18
Cautions for unsatisfactory professional conduct: Commissioner Determination under s. 299(1)(a) of Uniform Law	28
VCAT prosecution for potential professional misconduct (Uniform Law)	25
Binding costs determination for consumer matter: Commissioner Determination under s. 292(1) of Uniform Law	20
Reprimand for unsatisfactory professional conduct: Commissioner Determination under s. 299(1)(b) of Uniform Law	16
VCAT prosecution for potential professional misconduct or unsatisfactory professional conduct (LPA)	5
Compensation Order for consumer matter: Commissioner Determination under s. 308(2) of Uniform Law	3
VCAT prosecution for potential unsatisfactory professional conduct: (Uniform Law)	2

TIME TAKEN TO FINALISE COMPLAINTS

The time it takes to finalise a complaint varies depending on the complexity of the matters involved and the degree to which the parties cooperate with the Commissioner's processes. Of the 1,701 complaints resolved or finalised in 2017-18, 704 were closed within three months of their receipt (a 42% higher closure rate than in 2016-17).

TIME TAKEN TO FINALISE COMPLAINTS

Days since receipt of complaint	<30	31-60	61-90	91-120	>120	Total
Consumer Matter	373	205	137	91	187	993
Disciplinary Matter	326	84	44	27	153	634
Mixed Matters	5	8	6	2	53	74
Total	704	297	187	120	393	1,701

COMPLAINTS OUTSTANDING

By 30 June 2018, there were 481 complaints which had not been finalised, slightly lower than for the 2016-17 year.

COMPLAINTS OUTSTANDING

Days since receipt of complaint	<30	31-60	61-90	91-120	>120	Total
Consumer Matter	56	45	21	14	31	167
Disciplinary Matter	41	31	17	11	173	273
Mixed Matter	6	3	1	3	28	41
Total	103	79	39	28	232	481

FINANCIAL PERFORMANCE

The Board maintains several key funds that provide for the regulation of the legal profession, and fund services for the Victorian community.

In 2017-18 the Board allocated approximately \$22 million for regulatory and consumer protection programs, which include the Board and Commissioner's operations, and functions performed by both the Law Institute of Victoria and the Victorian Bar on behalf of the Board and Commissioner. A further \$30 million in funding was provided to Victoria Legal Aid, and \$9.2 million for improvements to the legal system (including the Board's Grants program and various law reform and public advocacy programs).

Expenditure purpose	(\$'000)
Regulation and consumer protection	22,049
Access to justice (Victoria Legal Aid funding)	30,037
Legal system improvements	9,230

Victorian Legal Services
BOARD COMMISSIONER

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