

# Annual 2021-2022 Report



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## Legal Services Commission

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|--------------|---|
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If your preferred language is a language other than English, contact the Translating and Interpreting Service (TIS) for assistance on **13 14 50**.

TIS provides a free, national telephone interpreting service available 24 hours a day, seven days a week. Telephone TIS on **1300 655 082** if you require on-site interpreters for face-to-face interviews.

## Acknowledgement of the traditional owners

The Legal Services Commission respectfully acknowledges the traditional owners of the land and pays respect to Elders past, present and emerging community leaders.

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# Letter of compliance



24 October 2022

The Honourable Shannon Fentiman MP  
Attorney-General and Minister for Justice  
Minister for Women and Minister for the  
Prevention of Domestic and Family Violence  
1 William Street  
BRISBANE QLD 4001

Dear Attorney-General

In accordance with section 490(1) of the Legal Profession Act 2007, I am pleased to submit to you the Legal Services Commission 2021-2022 Annual Report for presentation to Parliament.

This report has been prepared in accordance with:

- the prescribed requirements of the *Financial Accountability Act 2009* and the *Financial and Performance Management Standard 2019*, and
- the detailed requirements set out in the *Annual report requirements for Queensland Government Agencies*.

The Legal Services Commission 2021-22 Annual Report provides a comprehensive overview of the activities of the Legal Services Commission for the past financial year pursuant to our reporting obligations under section 490 of the *Legal Profession Act 2007*. The report also presents our audited financial statements and key performance indicators for the financial year ended 30 June 2022.

A checklist outlining the annual reporting requirements is provided at Appendix B of this annual report.

Yours sincerely

A handwritten signature in cursive script that reads 'M.L. Mahon'.

Megan Mahon  
Legal Services Commissioner

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## LEGAL SERVICES COMMISSION

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# Overview

## Message from the Commissioner

**The steady return to a sense of normality following the pandemic has meant this year has been one full of opportunity. I have been able to again engage in person with the profession and stakeholders, attend postponed events and start to make up for opportunities lost during the first two years of my tenure as Commissioner. I have also been able to start making the changes required to have a more meaningful impact on the regulation of the legal profession in Queensland.**

My focus throughout 2021–22 has been on reforming the Commission, to ensure it is an effective, efficient, and modern regulator, with systems and processes that properly support the important work that we undertake. A significant achievement this year has been the successful completion of our organisational restructure.

The make-up of the staff has also undergone change in the reporting year and recruitment continues to focus on ensuring that the skillset and professional experience of the Commission is broadened wherever possible. Having contemporary expertise across the areas of practice which are most frequently complained about to the Commission allows us to have a better understanding of the issues and complexities of the matters investigated and bring them to a speedier resolution. Continued professional development is also important to ensuring a capable, confident and engaged staff are able to commit to best practice and continuous improvement strategies.

While these kinds of changes are always disruptive to an organisation, I appreciate and acknowledge the staff of the Commission for their support and adaptability throughout this period, which has significantly contributed to improved productivity and a renewed focus on optimal service delivery. Ultimately, these changes benefit both the profession and consumers of legal services in Queensland.

Complementing our organisational improvement has been the development of our *Strategic Plan 2022–2027*. The Strategic Plan guides the Commission, as we continue the critical functions of regulating the legal profession and the provision of legal services by competent and qualified practitioners.

We have also re-established the Commission's self-assessment and compliance audit program. These audits are one of several tools available to the Commission to ensure that incorporated legal practices have appropriate management systems in place. The new audit program has a renewed focus and has received positive feedback from the profession. The program is outlined further in this report.

### Message from the Commissioner (*continued*)

I am also very proud to announce that the Commission has gone GREEN. Always believing in silver linings, the onset of the pandemic and the need to work remotely meant the Commission had to adapt to a new way of working. As reported last year, with the assistance of the Department of Justice and Attorney-General, we were able to create remote access and work from home for the first time in the history of the Commission. This also required an incremental transition from an entirely paper-based operation towards being paper-less. From 1 January this year, the Commission's functions are almost completely paperless. While we will always have the need to write to some stakeholders on paper or by post (depending on their individual circumstances) and some proceedings still require hard documents to be filed, most of document output of the Commission is now digital. This has not only resulted in significant cost savings on stationery and postage, but also means we are a far greener Commission.

Regulating the legal profession is an important task that safeguards consumers of legal services and ensures that legal practitioners and their employees are operating to the ethical standards that colleagues and the public would expect of members of the profession. It is important to remember that most legal practitioners act with integrity and honour. It is only for a small number of the profession, and other unqualified individuals that the Commission must investigate and pursue disciplinary or other enforcement action.

Where required, the Commission will take appropriate steps to ensure that standards of the profession are upheld and the public's confidence in the administration of justice is maintained. In 2021-22 the Commission initiated a broader range of enforcement and regulatory mechanisms available under the Act in addition to initiating disciplinary proceedings. In particular, I have sought injunctive relief or banning orders in a number of matters involving persons who acted unlawfully or inappropriately, to ensure swift action and better consumer protection.

Unlawful operation includes a wide variety of conduct, ranging from unqualified persons making court appearances on behalf of others, to lawyers without a current practising certificate giving legal advice. Unlawful operators pose a threat to the public by providing unqualified services and operating without the appropriate indemnity insurance, leaving members of the public exposed should things go awry. The Commission has dealt with an increase in unlawful operation allegations in the reporting year and taken steps to enforce the protections provided by our governing laws.

I continue to encourage reporting and thank all who have made complaints or provided information in relation to unlawful operators. We simply cannot address these illegal activities if we don't know about them, and the cooperation of the profession and general community is integral to being able to do something about the perpetrators.

In June, the *Personal Injuries Proceedings and Other Legislation Amendment Act 2022* (PIPOLA) was passed. This legislation amends the *Personal Injuries Proceedings Act 2022* (PIPA), the *Legal Profession Act 2007* (LPA), and the *Workers' Compensation and Rehabilitation Act 2003* (WRCA), introducing new provisions aimed at stopping the practice of claim farming of personal injury and workers compensation claims in Queensland.

The claim farming provisions in the PIPOLA replicate the provisions contained in the *Motor Accident Insurance Act 1994* (MAIA) which were introduced at the end of 2019. The PIPOLA amendments provide for the Commission to be the regulator for personal injuries claims under PIPA and for the Workers Compensation Regulator at the Office of Industrial Relations to be the regulator for claims made under the Workers Compensation legislation. The Motor Accident Insurance Commission remains the regulator for claims made under the Compulsory Third Party insurance scheme.

The amendments include new offence provisions prohibiting claim farming practices, including giving or receiving consideration for referring a claimant or potential claimant, and personally approaching or contacting another person to solicit or induce them to make a claim. The amendments provide the Commission with new powers to investigate the conduct of an external entity where it is suspected that the entity has contravened the claim farming provisions. The powers also enable the appointment of a special investigator where there is a reasonable suspicion that someone may have contravened the claim farming offence provisions.

The Commission has an ongoing commitment to further strengthen relationships with the Bar Association of Queensland and the Queensland Law Society as co-regulators of the profession. There have been many engagements and consultations over the preceding year and I acknowledge the time and effort of all those involved.

Integral to the Commission being at the forefront of emerging issues and challenges faced by the profession is ongoing engagement at all levels. I am committed to positive and mutually beneficial engagement with our stakeholders. While that has again meant many virtual meetings and presentations this year, face to face opportunities are increasing and I sincerely appreciate the opportunity to personally meet with members of the profession and other key stakeholders that have been able to occur.

The Commission's organisational transformation, including a restructure, new and improved processes, and focussing on staffing skills with a commitment to continuous improvement, will all support a stronger and more efficient Commission. This in turn will ensure that the Commission is able to support the profession in maintaining standards and better serve the people of Queensland.

Each aspect of the regulatory process for which the Commission is responsible is reported below. From enquiries, through to complaints, and necessary prosecutions. All regulation is for the betterment of the profession and vital to upholding standards and its good reputation.

Megan Mahon  
**Legal Services Commissioner**

## About the Commission

**The Legal Services Commission is an independent statutory body which was established in 2004 and continues its existence pursuant to the *Legal Profession Act 2007 (Act)*.**

The Act provides for the appointment of the Legal Services Commissioner who is conferred with statutory powers and the responsibility for the functions to regulate the legal profession, and to receive, manage and investigate complaints about the conduct of legal practitioners, their employees, and unlawful operators in relation to the provision of legal services in Queensland.

The Commissioner is supported by the staff of the Commission to discharge these obligations to ensure effective regulation of legal practice in Queensland in the interest of the administration of justice and for the protection of consumers of the legal profession and the public generally. This includes monitoring lawyers and legal practitioners while also safeguarding the public and the profession from those purporting to practise law when not entitled to do so. The Commission also has proactive function within the regulation of the profession, by identifying emerging issues and assisting and educating the profession on their ethical and legal obligations.

The Commission plays an integral role in the regulation of the legal profession in Queensland along with the Legal Practitioners Admission Board (LPAB), Bar Association of Queensland (BAQ), Queensland Law Society (QLS), the disciplinary bodies (Queensland Civil and Administrative Tribunal (QCAT) and Legal Practice Committee (LPC)) and the Courts.

The Commission ensures complaints are dealt with by a statutory body that is independent from the legal profession. The Commission's approach as an effective regulator protects consumers and also supports lawyers in their obligations to provide competent legal services, improved professionalism and ethical decision making.

## Protecting the public from unsuitable practitioners

The Commission ensures professional standards of behaviour are maintained, including the obligation that barristers and solicitors conduct their matters fairly and competently. This is essential work that contributes to keeping communities safe through the prevention, detection and deterrence of unsatisfactory professional conduct and professional misconduct within the legal profession.

While every matter is unique, the Commission aims to always be fair and consistent with disciplinary and enforcement activities, and the prosecution of unlawful operators. The Commission monitors the wider professional environment to identify conduct within our jurisdiction that warrants the commencement of an investigation matter (which is an investigation commenced by the Commissioner without a complaint).

Complainants are assisted through the complaints process as far as our resources and statutory limitations permit. They are provided with relevant, accessible information, including step-by-step guides to the complaint process.

The Commission also supports consumer redress for complainants where appropriate by giving them guidance on how to achieve satisfactory outcomes in relation to disputes with their legal services provider. Redress may include adjustment of legal costs charged, release of documents and other important information belonging to them, or a full account of trust monies.

## Protecting consumers from unqualified legal service providers

As an independent statutory body, the Commission acts in the public interest and plays an important role protecting the community. By ensuring members of the public can be confident in receiving sound legal advice from competent, qualified legal practitioners, the Commission safeguards the public from those practising law who are not qualified or entitled to do so.

Members of the public must be protected from people or corporations who offer to provide legal services or undertake work that amounts to providing legal services without the proper qualifications and authorisations. Under the Act, the Commission has the power to take action to stop unlawful operators and prosecute them.

This power is particularly important given the complexities of the law and the legal system, and the potentially severe and far-reaching consequences a legal outcome may have for an individual, their business or their family.

Practising law without the proper qualifications and authorisations is a criminal offence.

## Assisting and contributing to the profession

The work of the Commission ensures legal practitioners in Queensland uphold the highest professional standards, understand their obligations to their clients and when engaging with members of the public. This is achieved in two ways: by monitoring and regulating the legal profession within Queensland in accordance with the Act, and through direct engagement with, and education of, the profession including delivering presentations, providing educative news and alerts throughout the year, and attending events and other functions.

Major challenges facing the legal profession are addressed by working collaboratively with members of the profession and their representative bodies, to provide education, guidance and feedback on current and emerging issues.

The Commission constructively engages with the profession across a range of public and private sectors throughout Queensland and Australia to ensure that services provided are continuously improving and integrate current best practice.

## Engagement with emerging professionals

It is also important to engage with future members of the profession at both the undergraduate and graduate levels. The Commission is committed to ensuring that lawyers of the future enter the profession with a strong understanding of their ethical and professional obligations and the role of regulators, including the Commission.

## Regulatory framework

**Queensland operates a co-regulatory model of the legal profession. The Commission, alongside the BAQ and QLS, are the three primary regulatory authorities, each performing certain functions under the Act.**

Together, all authorities are responsible in varying ways for the promotion and enforcement of professional standards, competency, and honesty of the legal profession. In carrying out the regulatory functions outlined below, each authority contributes to ensuring confidence in the administration of justice and the protection of consumers of legal services.

### Regulatory authorities and their functions

#### LSC

- Peak regulatory body of the legal profession (lawyers, barristers, and solicitors).
- Receives complaints about the conduct of lawyers, legal practitioners, undertakes investigations and commences disciplinary proceedings where necessary.
- Investigates and prosecutes individuals and corporations who are unlawfully operating.
- Audits of incorporated legal practices.

#### BAQ

- Peak representative body of barristers in Queensland.
- Responsible for the issuing and regulation of practising certificates for barristers.
- Undertakes investigations into the conduct of Barristers when a matter is referred from the Commissioner.
- Responsible for making the barristers rules.

#### QLS

- Peak representative body of solicitors in Queensland.
- Responsible for the issuing and regulation of practising certificates for solicitors.
- Regulates solicitor's trust accounts, undertakes part 3.3 investigations, and enforcement action against solicitors when required.
- Responsible for making the solicitors rules.
- Provides support for the LPAB, which supports the Supreme Court in the admission of persons to the legal profession.

### Disciplinary bodies

Once the Commissioner has made the decision to prosecute, the matter must be brought before the relevant disciplinary body. For discipline applications relating to conduct of legal practitioners or legal practitioner employees the matter goes before either the QCAT or the LPC. For the prosecution of offences, the matters go before the Magistrates Court.

#### QCAT

- The Commissioner may make a disciplinary application to QCAT for the hearing of conduct matters. These applications relate to allegations of unsatisfactory professional misconduct and professional misconduct.
- An appeal of a QCAT decision may be made to the Queensland Court of Appeal.

#### LPC

- The Commissioner may make an application to the LPC for the hearing of conduct matters. These are limited to less serious allegations of unsatisfactory professional conduct (as opposed to the more serious professional misconduct) of Australian lawyers and Australian legal practitioners, as well as alleged misconduct of law practice employees.
- As required by the Act, the Commissioner provides secretariat support to the LPC.
- An appeal of a LPC decision may be made to QCAT.

#### Magistrates Court

- Complaint and summons are filed in the Magistrates Court for offences under the Act, including unlawful operators, either unlawfully providing legal services, representing that they will or are entitled to provide legal services, and other summary offences.
- Decisions of the Magistrates Court can be appealed in the ordinary way.

## The Queensland Legal Profession at a glance

**15,792**

Legal Practitioners in Queensland

**14,631** Solicitors and **1,161** Barristers

**7,552**

Legal Practitioners identify as MALE

**47.82%** of all Practitioners

Represents **45.70%** of Solicitors and **74.59%** of all Barristers



**8,232**

Legal Practitioners identify as FEMALE

**52.13%** of all Practitioners

Represents **54.25%** of Solicitors and **25.41%** of all Barristers

**8**

gender unspecified Practitioners

↑ **0.05%** of all Practitioners  
0.03% increase from 2021

**1,648**

Incorporated Legal Practices (ILP)

**65.16%**

of all Solicitor Law Practices  
↑ 6.32% increase from 2021



**867**

Other Solicitor Law Practices (sole practitioners or partnerships)

**34.28%**

↑ 5.45% increase from 2021



**14**

Multi-disciplinary Practices (MDP)

**0.55%**

of all Solicitor Law Practices

**2,529**

Solicitor Law Practices

↑ 1.85% increase from 2021



**323**

Barristers' Chambers

**940**

Barristers in Group Chambers

**81%**

↑ 0.5% increase from 2021

**102**

Group Chambers

**221**

Individual Chambers

## Practising Certificates

At 30 June 2022, there were 15,792 practising certificate holders in Queensland: an increase of 4.1% on the previous year. This data does not include those government legal officers that do not hold a practising certificate.

Government legal officers are defined in the Act to include any legal officer (whether or not they hold a practising certificate) who performs legal work in the jurisdiction for the Queensland Government.

Government legal officers are not required to hold a practising certificate to provide legal services to the Government. The Commission is not currently provided with any data in relation to government lawyers who do not hold a practising certificate.

## Barristers

At 30 June 2022, there were 1,161 barristers with practising certificates in Queensland. This is a 2% increase on the previous reporting period.

The move to group chambers at the Queensland Bar has made a slight increase of 0.5% with 81% of barristers with a practising certificate in group chambers.

|   | 2021-22 | 2020-21 | 2019-20 |
|---|---------|---------|---------|
| Number of barristers with current practising certificates | 1,161   | 1,136   | 1,134   |
| Number of barristers chambers in Queensland               | 323     | 324     | 552     |
| Group chambers  | 102     | 101     | 87      |

## Solicitors

At 30 June 2022, there were 14,631 practising solicitors in Queensland (14,338 with Queensland practising certificates, 293 with Interstate certificates and 14 foreign lawyers). This is an increase of 4.27% on the previous reporting period.

| Breakdown of Solicitors by practising certificate type | Count         |
|--|---------------|
| Foreign Lawyer   | 14            |
| Interstate PC  | 293           |
| Limited Principal                                      | 42            |
| Restricted Employee                                    | 3,135         |
| Restricted Principal                                   | 1             |
| Restricted Volunteer                                   | 71            |
| Unrestricted Employee                                  | 7,455         |
| Unrestricted Principal                                 | 3,577         |
| Unrestricted Volunteer                                 | 43            |
| <b>Total</b>   | <b>14,631</b> |

| Practitioner breakdown by firm size | 2021-22 | 2020-21 | 2019-20 |
|-------------------------------------|---------|---------|---------|
| 1                                   | 1,208   | 1,166   | 1,121   |
| 2 to 3                              | 692     | 734     | 687     |
| 4 to 6                              | 320     | 31      | 306     |
| 7 to 12                             | 148     | 158     | 128     |
| 13 to 24                            | 62      | 58      | 62      |
| 25 to 50                            | 27      | 25      | 20      |
| 51 to 100                           | 11      | 11      | 14      |
| 101 to 200                          | 11      | 10      | 7       |
| 200+                                | 1       | 1       | 1       |

# Compliance and engagement

The Commissioner has powers under the Act to regulate and audit ILPs.

The Act places obligations on ILPs and their Legal Practitioner Directors (LPDs) to implement and maintain an appropriate management system. These systems need to be designed to ensure that practitioners at the ILPs can maintain their professional and ethical obligations. The Act also obliges LPDs to take reasonable steps to prevent or remedy any breach of these standards where it is apparent that a breach has occurred or may occur.

An appropriate management system simply means a law practice's formal and informal management policies, procedures and controls, work culture, and habits of interaction and practice that support and encourage ethical behaviour by all employees.

Importantly, there is no one best way to proceed with the implementation and maintenance of a management system and there is no single system that is applicable to all law practices. A management system that is appropriate for one law practice may not be appropriate for another and these systems will vary from law practice to law practice.

The Commission may conduct an audit of:

- the compliance of an ILP, its officers, and employees with the requirements of the Act, the *Legal Profession Regulation 2017* and the *Australian Solicitors Conduct Rules 2012*; and
- the management of the provision of legal services by the ILP, including the supervision of the officers and employees providing the services.

Over the last year the Commission's audit program was re-established with the commencement of self-assessment and compliance audits. The primary objective, and renewed focus, of these audits is to help ILPs to implement appropriate management systems and reduce the likelihood of complaints being made against the law practice. These audits are a collaborative and educative approach for the Commission to work with ILPs to identify opportunities for improvement.

## Self-assessment audits and compliance audits

There are two types of audits that the Commission can conduct: **self-assessment audits** and **compliance audits**.

**Self-assessment audits** require LPDs to review their management systems and supervisory arrangements at least six-months after they have given notice to the QLS of the intention to engage in legal practice as an ILP. The Commission provides the LPDs with a self-assessment audit questionnaire asking them to review the effectiveness of their management systems and address three key objectives of sound law practice management.

LPDs use a self-assessment audit questionnaire to describe the status of their practice management systems against the three key objectives. It is designed to help the Commission understand the systems currently in place in the legal practice. The questionnaire is also designed to provide an opportunity for the law practice to identify further improvements that could be implemented.

**Compliance audits** comprehensively review the management systems or review discrete aspects of the management systems (e.g., the supervisory arrangements or their billing practices) against the professional obligations owed by the practice and/or its staff.

Compliance audits are a resource intensive exercise, and the Commission conducts these audits on an 'as needs' basis. This may include for example, where the Commission receives information, or has determined by a risk-assessment, creating a reasonable suspicion that the practice or some aspects of its practice, falls short of the expected standards or requirements. These audits may comprise a range of activities, such as surveys, policy and procedure review, interviews with LPDs, managers, staff, clients and relevant third parties, and file reviews.

A draft audit report, including recommendations and further action required to remedy or improve systems, is then published to the LPDs. The Commissioner then ordinarily provides an opportunity for the LPDs to respond to the draft report before it is finalised.

As the audit program was re-established this reporting year, the focus was on self-assessment audits to assist ILPs, which commenced operating within the last 12-month period, to meet their obligations and to reduce the likelihood of complaints and non-compliance. 244 self-assessment audits were sent out in the reporting year. No compliance audits were conducted last year.

| Self-assessment audit status summary                                    | 2021-22    |
|---|------------|
| Self-assessment audits to be sent                                       | 0          |
| Waiting to receive self-assessment audits                               | 9          |
| Self-assessment audits received and to be reviewed                      | 0          |
| Waiting to receive further requested info                               | 19         |
| 12-month review and follow up   | 150        |
| No action required (ILP commenced less than six months ago)             | 56         |
| Response overdue  | 4          |
| Non-compliance (self-assessment audits not submitted and no engagement) | 1          |
| Self-assessment audits completed and finalised                          | 5          |
| <b>Total</b>  | <b>244</b> |

## PIPA Advertising Restrictions and Anti-Touting

The PIPA restricts the advertising of personal injury services by legal practitioners and others. Personal injury services can only be advertised or published in accordance with sections 64, 65 and 66 of the PIPA.

The legislation also contains anti-touting provisions which prevent a person from inducing or attempting to induce another person into making a claim for personal injuries at the scene of an incident or at hospital after the incident.

A breach of the PIPA advertising restrictions or anti-touting provisions are summary offences and significant penalties can apply, including fines. In addition to possible prosecution of these offences, the same conduct can also result in disciplinary proceedings for legal practitioners.

The Commissioner is responsible for dealing with enquires related to these provisions and monitoring and enforcing these offences under the PIPA.

During the reporting period the Commission received 62 PIPA related enquiries and commenced one investigation matter in relation to possible non-compliance with the advertising restrictions imposed by the PIPA. This continued reduction in enquiries and investigation matters relates to the reduction in the number of queries made regarding the restrictions and the Commissioner’s educative approach toward remedying breaches of the PIPA advertising restrictions.

|  | 2021-22 | 2020-21 | 2019-20 |
|--|---------|---------|---------|
| PIPA enquiries handled during the period | 62      | 89      | 123     |

### PIPA enquiries by outcome

| Outcome                                     | Count     |
|---|-----------|
| Provided information about LSC to lawyer    | 44        |
| General enquiry                             | 11        |
| Current                                     | 6         |
| Provided Information about the Legal System | 1         |
| <b>Total</b>                                | <b>62</b> |

### Engagement

**The Commission adopts an educative approach, where appropriate, to ensure that legal practitioners are aware of their responsibilities and obligations. The Commissioner aims to achieve this through proactive and regular engagement with members of the profession in various formats, including communicating directly via regular updates, which drive awareness and, in turn, improvements in the profession.**

Over the past year, our aim has been to enhance the effectiveness of our regulation by engaging with the profession through presentations and presence at relevant events and functions. Despite the continuing limitations imposed by COVID-19 for part of the year, the Commissioner and other staff of the Commission were able to continue to undertake these functions either virtually or in-person.

The Commission began its regular newsletters and alerts to the profession in the reporting year, with the aim to deliver these newsletters quarterly.

#### Professional and community engagement

The Commission's leadership team attended the online Conference of Regulatory Officers (CORO) in November 2021, with the Commissioner providing a Jurisdictional update for Queensland.

The Commissioner also presented at the Family Law Practitioners Association of Queensland Conference on what it is to be an ethical lawyer in November 2021 and was part of the QLS Annual Gold Coast Conference Governance Panel in June 2022.

The Commissioner prioritised engaging with emerging legal professionals, through university presentations and lectures, to promote an awareness and understanding of the regulatory framework in Queensland, the role of the Commission and its operations.

Our Director of Compliance and Engagement was part of a panel at the QLS Symposium discussing marketing and advertising: tips and traps for personal injuries solicitors and practices.

Representatives from the Commission also attended a number of events throughout the year, engaging with members of the profession while continuing to increase awareness and encourage greater adherence to professional obligations and standards. The Commission regularly met with other regulatory bodies and government departments and agencies around the regulation of professional standards within the legal profession.

#### Legal Services Commission reference group

The Commission's reference group was established to provide an informal forum in which members of the group share and discuss current and emerging issues. The group consists of both practising lawyers and law academics and those who are familiar with the nature of the legal system and legal practice.

The reference group is an opportunity for the Commission to hear directly from our stakeholders and ensure transparency and collaboration on key issues or areas of concern.

The group met three times throughout the reporting period, topics discussed included the restructure of the Legal Services Commission, the way in which practices are managing work from home and hybrid working arrangements, retention and recruitment concerns, proposed amendments to the Act, legislative reform in relation to claim farming and general Commission updates.

The Commission is sincerely thankful to all members of the Reference Group who have continued to participate and generously given their time.

#### Newsletter and alerts to the profession

The Commission issues a newsletter to the entire profession on a regular basis, covering topical and important issues. Alerts are issued as required, for example when injunctions against former law practice employees or unlawful operators have been ordered by the Court.

These newsletters and alerts provide direct communication to all practising certificate holders in the profession, allowing them to receive updates, information on new regulatory guides, and other information from the Commission. The newsletters seek feedback from the profession on a variety of issues and encourages ongoing engagement.

# Professional conduct

The Commission receives and manages complaints and enquiries from consumers of legal services, practitioners and other persons who engage or interact with the legal profession. The Commission aims to deal with all parties in a fair and efficient manner and to assist complainants through the complaint process as far as resources and statutory limitations permit.

## Enquiries

Members of the public and the profession make thousands of enquiries each year with the Commission. Enquiries range in nature from general queries about whether a person may be able to make a complaint, to members of the profession seeking assistance to better understand their legal or ethical obligations.

1,976 new enquiries were received in this reporting year, which was a decrease from the previous reporting year. Over eighty percent of enquiries were finalised within one day.

While enquiries have declined, the Commission has generally seen an increase in the number of other interactions with the profession or members of the public. This includes an increase in the number of emails and other documents produced and received, including on ongoing complaint and investigation matters. The level of activity required on matters, whether enquiries or complaint and investigation matters, has increased consistently.

|  | 2021-22 | 2020-21 | 2019-20 |
|--|---------|---------|---------|
| Enquiries from the public received       | 1,976   | 2,780   | 2,795   |
| PIPA enquiries handled during the period | 62      | 89      | 123     |

|                    | 2021-22       | 2020-21       | 2019-20       | 2018-19       |
|--------------------|---------------|---------------|---------------|---------------|
| Calls              | 4,420         | 5,272         | 5,223         | 4,778         |
| Documents          | 5,866         | 5,518         | 5,388         | 5,653         |
| Emails received    | 22,440        | 20,727        | 16,695        | 14,443        |
| Emails sent        | 27,592        | 17,519        | 14,728        | 12,472        |
| External documents | 7,669         | 2,142         | 57            | 86            |
| <b>Total</b>       | <b>67,787</b> | <b>51,178</b> | <b>42,091</b> | <b>37,432</b> |

## Complaints and investigation matters

As an independent statutory body, the Commission has the power to regulate the legal profession, including receiving and, where appropriate, investigating complaints about the conduct of lawyers, practitioners and their employees, and unlawful operators.

All complaints are dealt with as efficiently and expeditiously as practicable and balanced with competing priorities.

The Commissioner has the discretion to refer professional conduct investigations involving barristers to the BAQ, all other investigations are undertaken by the Commission. Once completed, any investigation findings are reported to the Commissioner, who then makes the decision as to the initiation of any disciplinary proceeding, prosecution, or dismissal of the matter.

The Act also gives the Commissioner power to pursue an investigation matter without the need for a formal complaint being made. Under the Act, these matters are referred to as 'investigation matters'.

Information may be received by the Commissioner from a variety of sources, including anonymous tip-offs, media reports and commentary, referrals from the courts, individuals or other agencies, or information that may come to light during other investigations.

If the Commissioner believes it is reasonable to commence an investigation, that decision results in the commencement of an investigation matter. Investigation matters may relate to any of the conduct covered by the Act, including investigating contraventions of PIPA, suspected unlawful operators, and other summary offences.

In total there were 618 complaints and investigation matters on hand at the start of the reporting year. Including summary dismissals, 917 complaints and investigations matters were finalised, and 948 new matters were received or initiated. At 30 June 2022 there were 725 matters on hand. These numbers are broken down further in the following pages.

### Complaints

The year commenced with 481 complaints on hand. 832 complaints were received, a decrease from previous years. This decrease is partly attributable to the spike in complaints made during the pandemic which has tapered off and due to more accurate cleansing of the Commission's data.

855 matters were finalised in the reporting period. Of these, 706 were summarily dismissed and 154 were progressed to an investigation and finalised. At 30 June 2022, there were 518 complaints on hand at various stages of progress.

### Complaints (investigated and finalised) by complainant type

|                      | 2021-22    | 2020-21    |
|----------------------|------------|------------|
| Barrister            | 2          | -          |
| Beneficiary          | 1          | 5          |
| Client/former client | 84         | 107        |
| Government           | 1          | -          |
| Judge                | 1          | 1          |
| M.P.                 | 1          | -          |
| Non client           | 30         | 34         |
| Solicitor            | 10         | 29         |
| Solicitor for client | 14         | 3          |
| Third party          | 15         | 18         |
| Other                | -          | 3          |
| <b>Total</b>         | <b>159</b> | <b>200</b> |

## Complaints (investigated) by Area of Law

|  | 2021-22    | 2020-21    |
|--|------------|------------|
| Administrative Law                         | 2          | 1          |
| Bankruptcy and insolvency                  | 2          | -          |
| Building/Construction Law                  | -          | 1          |
| Commercial/Company Law                     | 8          | 10         |
| Conduct not in the practice of law         | 3          | 6          |
| Conveyancing                               | 10         | 18         |
| Criminal Law                               | 14         | 20         |
| Deceased estates or trusts                 | 24         | 23         |
| Family Law                                 | 40         | 36         |
| Immigration                                | 6          | 3          |
| Industrial Law                             | 1          | 1          |
| Leases/mortgages                           | -          | -          |
| Litigation                                 | 20         | 18         |
| Personal injuries/<br>WorkCover litigation | 9          | 22         |
| Property Law                               | 8          | 4          |
| Trust account breaches                     | -          | 2          |
| Other                                      | 12         | 35         |
| <b>Total</b>                               | <b>159</b> | <b>200</b> |

## Complaints (investigated) by outcome

|  | 2021-22    | 2020-21    |
|--|------------|------------|
| Dismissed on the basis of no public interest       | 25         | 46         |
| Dismissed on the basis of no reasonable likelihood | 114        | 128        |
| Referred to Legal Practice Committee               | -          | 5          |
| Referred to tribunal                               | 15         | 7          |
| Referred - other investigation process             | -          | 4          |
| Referred for criminal litigation                   | -          | 2          |
| Withdrawn  | 5          | 7          |
| All other outcomes                                 | -          | 1          |
| <b>Total</b>                                       | <b>159</b> | <b>200</b> |

## Complaints (investigated) by nature of matter

|                    | 2021-22    | 2020-21    |
|--------------------|------------|------------|
| Communication      | 7          | 14         |
| Compliance         | 8          | 14         |
| Costs              | 18         | 14         |
| Documents          | 3          | 2          |
| Ethical matters    | 75         | 79         |
| Personal conduct   | 3          | 2          |
| PIPA               | 0          | 6          |
| Quality of service | 37         | 52         |
| Trust funds        | 6          | 10         |
| All other outcomes | 2          | 7          |
| <b>Total</b>       | <b>159</b> | <b>200</b> |

## Summary dismissals by outcome (dismissal reason)

|   | 2021-22    | 2020-21    |
|---|------------|------------|
| Frivolous/vexatious/lacking in substance  | 26         | 11         |
| Not Chapter 4 conduct (cost dispute only) | 40         | 47         |
| Not Chapter 4 conduct (other)             | 470        | 583        |
| Not comply with section 431 notice        | 70         | 59         |
| Out of time                               | 35         | 20         |
| Previous complaint                        | 4          | 5          |
| Referred - other investigation process    | 21         | 30         |
| Struck-off                                | 2          | 1          |
| Withdrawn                                 | 38         | 36         |
| Other                                     | -          | 13         |
| <b>Total</b>                              | <b>706</b> | <b>805</b> |

## Summary Dismissals by area of law

|  | 2021-22    | 2020-21    |
|--|------------|------------|
| Administrative Law                     | 6          | 7          |
| Bankruptcy and insolvency              | 6          | 4          |
| Building/Construction Law              | 10         | 18         |
| Commercial/Company Law                 | 36         | 37         |
| Conduct not in the practice of law     | 7          | 9          |
| Conveyancing                           | 57         | 69         |
| Criminal Law                           | 51         | 43         |
| Deceased estates or trusts             | 82         | 76         |
| Family Law                             | 191        | 227        |
| Immigration                            | 5          | 5          |
| Industrial Law                         | 8          | 12         |
| Leases/mortgages                       | 5          | 2          |
| Litigation                             | 77         | 113        |
| Personal injuries/WorkCover litigation | 38         | 57         |
| Property Law                           | 55         | 41         |
| Trust account breaches                 | 1          | -          |
| Other (includes unspecified)           | 71         | 85         |
| <b>Total</b>                           | <b>706</b> | <b>805</b> |

## Summary dismissals by nature of matter

|                    | 2021-22    | 2020-21    |
|--------------------|------------|------------|
| Communication      | 56         | 48         |
| Compliance         | 12         | 14         |
| Costs              | 63         | 89         |
| Documents          | 12         | 20         |
| Ethical matters    | 312        | 417        |
| Personal conduct   | 35         | 5          |
| PIPA               | -          | 3          |
| Quality of service | 183        | 177        |
| Trust funds        | 13         | 14         |
| Other              | 20         | 18         |
| <b>Total</b>       | <b>706</b> | <b>805</b> |

## Investigation matters

An investigation matter is commenced when the Commissioner believes that an investigation about a matter should be started into the conduct of an Australian legal practitioner, law practice employee or unlawful operator. Once investigated, the matter can be dismissed or proceed with a regulatory response. Regulatory responses may include proceeding with a disciplinary application, or if the conduct related to an unlawful operator, by complaint and summons to prosecute in the Magistrates Court, or other statutory protections measures pursued, such as an injunction or banning order.

The Commission had 137 investigation matters on hand at the start of the reporting period. 126 new investigation matters were commenced and 57 were finalised during the period. At 30 June 2022 there were 207 investigation matters on hand.

### Investigation matters by outcome

| By outcome                              | 2021-22   | 2020-21   |
|---|-----------|-----------|
| No public interest                      | 8         | 19        |
| No reasonable likelihood                | 16        | 17        |
| Referred for civil litigation           | -         | 3         |
| Not Chapter 4 conduct (other)           | 1         | -         |
| Referred to Magistrates Court           | 3         | -         |
| Referred to Tribunal                    | 18        | 5         |
| Referred to other investigative process | 3         | 1         |
| Withdrawn                               | 3         | -         |
| Other outcomes                          | -         | 1         |
| <b>Total</b>                            | <b>57</b> | <b>46</b> |

### Investigation matters by area of law

|  | 2021-22   | 2020-21   |
|--|-----------|-----------|
| Bankruptcy and insolvency              | 2         | -         |
| Commercial/Company Law                 | 1         | 1         |
| Conduct not in the practice of Law     | 12        | 8         |
| Conveyancing                           | 2         | 3         |
| Criminal Law                           | 3         | 5         |
| Deceased estates or trusts             | 1         | 4         |
| Family Law                             | 4         | 1         |
| Immigration                            | 2         | -         |
| Industrial Law                         | 1         | -         |
| Litigation                             | 6         | 1         |
| Personal Injuries/WorkCover litigation | 2         | 12        |
| Trust account breaches                 | 3         | 2         |
| Unspecified                            | 1         | -         |
| Other                                  | 17        | 9         |
| <b>Total</b>                           | <b>57</b> | <b>46</b> |

### Investigation matters by nature of matter

|                    | 2021-22   | 2020-21   |
|--------------------|-----------|-----------|
| Compliance         | 20        | 15        |
| Costs              | 2         | -         |
| Ethical matters    | 22        | 16        |
| Personal conduct   | 3         | 1         |
| PIPA               | 1         | 8         |
| Quality of service | 3         | 3         |
| Trust funds        | 4         | 2         |
| Other              | 2         | 1         |
| <b>Total</b>       | <b>57</b> | <b>46</b> |

# Disciplinary proceedings

**The Commissioner has the sole authority to bring disciplinary proceedings against lawyers, legal practitioners and law practice employees in relation to conduct matters under the Act.**

The Commissioner's involvement in discipline applications is conducted fairly, transparently and according to the principles of natural justice. The model litigant principles are upheld in all proceedings and dealings with respondents and their legal representatives.

The year commenced with 43 disciplinary proceedings and prosecution matters in train, 21 were commenced during the reporting period and 24 were finalised.

## Disciplinary proceedings and Offence Prosecutions by area of law

|   | 2021-22    | 2020-21   |
|---|------------|-----------|
| Commercial/Company Law                  | 3          | 1         |
| Conduct not in the practice of law      | -          | 1         |
| Conveyancing                            | 3          | 3         |
| Criminal Law                            | 1          | 4         |
| Deceased estates or trusts              | 1          | 1         |
| Family Law                              | 1          | 1         |
| Litigation                              | 4          | 1         |
| Personal injuries/ WorkCover litigation | 1          | 2         |
| Property Law                            | 1          | -         |
| Trust account breaches                  | 5          | -         |
| Other                                   | 4          | 3         |
| <b>Total</b>                            | <b>24*</b> | <b>17</b> |

\* Litigation data for 2021-22 includes matters that were discontinued or withdrawn.

## Disciplinary proceedings and Offence Prosecutions by nature of matter

| No. by matter nature | 2021-22    | 2020-21   |
|----------------------|------------|-----------|
| Communication        | 1          | -         |
| Compliance           | 7          | 1         |
| Costs                | 1          | -         |
| Ethical matters      | 6          | 6         |
| Personal conduct     | 1          | 5         |
| Quality of service   | 1          | 5         |
| Trust funds          | 1          | -         |
| Other                | 6          | -         |
| <b>Total</b>         | <b>24*</b> | <b>17</b> |

\* Litigation data for 2021-22 includes matters that were discontinued or withdrawn.

## Disciplinary proceedings and Offence Prosecutions by outcome

| No. by outcome             | 2021-22    | 2020-21   |
|----------------------------|------------|-----------|
| One or more charges proved | 17         | 12        |
| Reconsidered - NPI         | 3          | 1         |
| Withdrawn - NPI            | 3          | 1         |
| Withdrawn - NRL            | 1          | -         |
| <b>Total</b>               | <b>24*</b> | <b>17</b> |

\* Litigation data for 2021-22 includes matters that were discontinued or withdrawn.

# Other litigation and enforcement action

The year saw an increase in other litigation and proceedings, in addition to dealing with complaints and any subsequent disciplinary proceedings. This regulatory activity does take significant resourcing and time. However, these functions and the proceedings and prosecutions which were all successfully pursued, are critical to the protection of consumers. There are instances, where the potential impact of harm to individuals, as well as the reputation of the profession and confidence in the administration of justice, will warrant such matters taking priority over disciplinary matters.

## Unlawful operators and summary offences

The Commissioner seeks to protect the public and the profession from those purporting to practise law without the necessary qualifications, including a valid and appropriate level practising certificate. Practising law, or even representing an entitlement to do so, without the necessary qualifications is a criminal offence.

The Commissioner relies on reports from members of the public, practitioners and the courts to identify these activities for potential investigation. Investigation of these matters involves gathering sufficient evidence to meet the higher burden of proof required to successfully prosecute alleged offenders. Prosecutions of offences are actively pursued to ensure that consumers are protected from the serious consequences that can arise from engaging unlawful operators (often without knowing that they are not qualified) and so that the legal profession's reputation and standards are upheld.

The Commission successfully prosecuted one individual and has filed two other matters for prosecution for unlawful operation, and obtained four injunctions and one banning order during the year.

## Injunctions and warrants

Injunctions can be sought under section 703 of the Act and are another tool available to take swift action against persons who are or maybe engaging in unlawful conduct that may be harmful to the consumers of legal services in Queensland. Injunctions are only sought where it is in the public interest to do so and provide a means to prevent harmful action from continuing while an investigation or disciplinary action is undertaken.

Matters of note include *Legal Services Commissioner v Stephen Arulogan & Anor* [2021] QSC in which the Commission obtained an injunction against an alleged unlawful operator and his company, prohibiting them from engaging in legal practice or advertising that they can engage in legal practice. This matter was originally referred to the Commission by His Honour Judge Ken Barlow KC after Mr Arulogan acted as a 'McKenzie's friend' for a plaintiff in a case and concern was raised that he had strayed beyond non-legal assistance and into the realm of legal practise. Mr Arulogan had a law degree but had never been admitted as a lawyer or legal practitioner. The subsequent investigation revealed that Mr Arulogan was advertising his services on the online platform, Airtasker, where he held himself out as a lawyer with a range of experience, and in some instances advertised himself as the principal of his own legal practice. The injunction was granted alongside undertakings from Mr Arulogan, both personally and as the director of his company, not to engage in legal practice or advertise that they could do so, while not qualified.

Another decision of note is the matter of *Legal Services Commissioner v Moore* [2021] QSC 280, which involved an unqualified person holding themselves out to be a qualified legal practitioner director of an ILP and the alleged theft of trust money. Ms Moore had previously been investigated and successfully prosecuted by the Commission, after the QLS successfully obtained an injunction in 2019, preventing Ms Moore from engaging in or holding herself out as a legal practitioner. In this instance, to best protect the consumers of legal services in Queensland a banning order was sought and granted by the Supreme Court, preventing Ms Moore from ever managing a corporation that is an incorporated legal practice again and the alleged theft of trust monies was referred to the Queensland Police Service for further investigation.

A number of search warrants were executed across Queensland in the reporting year. The execution of these warrants was successful in obtaining critical evidence for the investigation and prosecution of offences for unlawful operation in the Magistrates Court. The Commission is appreciative of the cooperation and support of the Queensland Police Service in assisting the Commission in executing the warrants.

### Removal from the local roll

The local roll under the Act records the names of all persons admitted to the legal profession as a lawyer. It is a single roll that comprises the various rolls established over time, including the previous solicitors roll and barristers roll (prior to the 2004 Legal Profession Act) and the roll of legal practitioners (created under the 2004 Legal Profession Act).

There are occasionally circumstances where a legal practitioners may be found to have engaged in conduct so serious that orders are made resulting in the practitioner's name being removed or 'struck' from the local roll in Queensland, or the recommendation made for their name to be removed from an interstate roll.

During the last reporting period orders were made for five lawyers to be removed from the local roll. This is two less than the previous reporting year.

### Discipline Register

The Commission maintains a public register of disciplinary action against lawyers as required by the Act. The purpose of the Register is to provide public access to the names of legal practitioners whose conduct has been found to be a more serious level of conduct, being professional misconduct. In accordance with the Act, disciplinary findings of the lesser categorisation of unsatisfactory professional conduct are currently not entered in the Register. However, as all orders of the Tribunal and the LPC are required by the Act to be filed with the Supreme Court, the outcome of all disciplinary proceedings become a matter of public record and are freely searchable, unless subject to a non-publication order.

There were nine entries made to the Discipline Register during the reporting period. The Register is located on the Commission's website and can be accessed at: <https://www.lsc.qld.gov.au/discipline/queensland-discipline-register>.

### Tribunal decisions

The following decisions were handed down during the last reporting period. Some of the matters listed were commenced or heard during earlier reporting periods.

#### QCAT

| Decision  |
|---|
| <i>Legal Services Commissioner v McKenzie</i> [2021] QCAT 377       |
| <i>Legal Services Commissioner v Doyle</i> [2021] QCAT 347          |
| <i>Legal Services Commissioner v Walker</i> [2021] QCAT 389         |
| <i>Legal Services Commissioner v Smith</i> [2021] QCAT 345          |
| <i>Legal Services Commissioner v Pene</i> [2021] QCAT 299           |
| <i>Legal Services Commissioner v Hartvigsen</i> [2021] QCAT 319     |
| <i>Legal Services Commissioner v Harrington</i> [2021] QCAT 267     |
| <i>Legal Services Commissioner v Stevenson</i> [2021] QCAT 275      |
| <i>Legal Services Commissioner v Bentley (No 5)</i> [2021] QCAT 226 |
| <i>Legal Services Commissioner v Ferguson</i> [2021] QCAT 205       |
| <i>Legal Services Commissioner v Keliher</i> [2021] QCAT 211        |
| <i>Legal Services Commissioner v SD</i> [2021] QCAT 204             |
| <i>Legal Services Commissioner v Bui</i> [2021] QCAT 93             |
| <i>Legal Services Commissioner v Bentley (No 4)</i> [2021] QCAT 2   |

# Operations, policy and strategy

Part of the Commission's role includes the publication of information and guidance to the profession and the public, on compliance with the Act, the Commission's approach to regulation and its regulatory remit. This may include the publication of information sheets to aid the public's understanding of Act, as well as policies and regulatory guidelines to assist the profession. As the peak regulatory body for the legal profession, the Commission also has a role in pursuing and assisting in legislative reform that relates to the profession. This includes participating in the development and consultation processes surrounding proposed legislation or amendments, and where changes impact the Commission's regulatory remit, implementing those amendments and changes.

## Governance and organisational structure

### Commissioner Megan Mahon

The Legal Services Commissioner is an independent statutory officer appointed under the Act by the Governor-in-Council. The Commissioner reports to the Attorney-General.

Being responsible for the Legal Services Commission in the discharge of its statutory duties, the Commissioner ensures complaints made to the Commission are dealt with as efficiently and expeditiously as resources and service demands permit.

Commissioner Mahon was appointed as Legal Services Commissioner on 16 October 2019 and has a Bachelor of Laws degree with Honours and, on completion of five-year articles, was admitted as a Solicitor of the Supreme Court of Queensland.

In 2011 Commissioner Mahon was appointed a Notary Public, and the following year became a Fellow of the Australian Academy of Law. On announcing Commissioner Mahon's appointment, the then Attorney-General acknowledged the Commissioner's distinguished career in private practice for more than 20 years and her WLAQ 2009 Woman Lawyer of the Year award. Commissioner Mahon was also the 2017 recipient of the Queensland Law Society President's Medal.

### Staff of the Commission

The Commission comprises the Commissioner and a full-time equivalent (FTE) team of 29 staff. As at 30 June 2022, the Commission had 13 vacancies, in addition to two staff members on extended leave and three staff on reduced hours. Two temporary staff filled (or backfilled) these positions, alongside

five inter-department secondments. Four staff members were acting in higher positions. The net result being an actual FTE at 30 June 2022 of 26 staff.

The Commission was also granted additional funding for the implementation of the new oversight and enforcement measures to prohibit claim farming practices contained within the *Personal Injuries Proceedings and other Legislation Amendment Act 2022*.

The funding provided for four FTE to implement and establish the new measures. At 30 June 2022, three FTE had been recruited, with one position remaining vacant pending recruitment.

### Organisation change and strategic workforce planning

Over the past year, the Commission has undergone a significant organisational change which has incorporated both a restructure and realignment of the Commission's staff and reporting lines, and changes to our internal operational processes and workflows. All of this has been aimed at improving the Commission's efficiency and effectiveness as a regulator.

The Commission was previously structured such that all staff reported directly to the Commissioner in respect to human resources and work matters. There was also a Director of Investigations position that did not have any human resources responsibilities but provided assistance to the Commissioner in relation to managing the workflow of complaints and investigation matters.

The Commission is now structured into three operational units:

- Compliance and Engagement Unit, which comprises a compliance team and an assessment team;
- Professional Conduct Unit, which comprises two investigations teams and one litigation team; and
- Operations, Policy, and Strategy Unit.

Each Unit is led by a director who reports to the Commissioner.

Part of this organisational change was driven by the need to have more clear and efficient lines of management and accountability. The implementation of working teams within the professional conduct unit, ensures work is not being done in silos but within a team for the purposes of innovation, discussion about matters, and continuity of workflow to ensure efficient and consistent outputs.

The second part of the organisational change was to re-establish the proactive function of the Commission. Effective regulation takes a two-pronged approach to its operation – a reactive function and a proactive function.

The proactive function of the Commission includes engagement with the profession as outlined earlier in this report, but also policy and legislation reform and consultations, the analysis of trends in relation to the conduct of the profession and being vigilant to the harms to the public, identifying current and emerging issues, and communicating and educating the profession in relation to limiting those harms from occurring.

The organisational change allows for the proactive function of the Commission to be enhanced. It is anticipated that over the coming reporting year further enhancement to this function will continue to occur and be worked out as we further engage with the profession and other relevant stakeholders.

The Commission seeks organisational excellence in the application of our statutory functions and obligations. The aim is for continuous improvement in all our services and particularly in the way complaints are received, managed, investigated and progressed, while positively and proactively engaging with stakeholders.

### Code of conduct

As an independent statutory body, the Commission currently employs legal officers and other staff who remain officers of the Department. In addition to the Commission's professional, legal, and ethical obligations, all staff adhere to the Code of Conduct for the Queensland Public Service and the Department's Charter. The lawyers employed at the Commission are also subject to the professional obligations of all lawyers, including professional rules of conduct.

## Performance reporting

The reporting year saw a significant drop in the number of both summary dismissal and investigation matters completed successfully against the key performance indicator percentage targets. The variation from previous years is due to several factors.

As part of the Commission's organisational change, there was focus placed on the Commission's ongoing 'aged matters project'. The project was aimed at clearing a backlog of existing matters that had built up over a period of years due to the inefficiencies of the Commission's previous organisational structure, bottle-necking issues and resourcing deficiencies. In addition, the preceding two years of the pandemic saw a substantial increase in the numbers of both complaints and enquiries coming to the Commission. The existing inefficiencies combined with the increasing demand on the Commission's resources during this time resulted in a growing number of aging files on hand. In prioritising these files, the data on the timeliness of matter completions has been skewed as a result of many older matters being finalised and recorded in the completion and timeliness statistics.

Changes to the Commission's reporting and data cleansing process were also made to improve the quality of the data reported each year. This was also complimented by changes to the Commission's case management system, including changes to the recording of various matters and changes to process and workflows. These changes have also impacted the numbers reported relative to previous years as figures are now calculated and recorded differently.

The increase in other litigation and enforcement activities over the reporting year has also impacted on the resources available to progress complaints, which was necessary given the time critical action required to protect consumers of the services of the legal profession and the public generally.

The Commission undertook significant recruitment activities, including onboarding and training of new staff, to fill the Commission's FTE establishment. This additional activity impacted the Commission's output over the reporting period. It is anticipated that the complement of staff, the reinvigorated operational teams, and streamlined workflows will see improvement to our services delivery over the next reporting year.

The Commission's performance obligations have been summarised in the table below:

| Service   | Performance target   | 2021-22 | 2020-21 |
|---|--|---------|---------|
| <b>Enquiries:</b> informal queries or enquiries that are made by telephone, writing, email or in person.  | Respond to all enquiries in a timely manner.   | 1,976   | 2,869   |
|   | Response times:  |         |         |
|   | 80% within one working day of receipt.   | 81.2%   | 71.3%   |
|   | 100% within two working days of receipt.   | 83%     | 28.7%   |
| <b>Complaints:</b> new complaints received.   | Respond to all complaints received in a timely manner, giving users of legal services an independent, timely, effective, fair and reasonable means of redress for complaints.  | 832     | 1,214   |
|   | Complaints on hand at 30 June 2022.  | 518     | 481     |
| <b>Summary Dismissals:</b> number of complaints assessed and finalised by way of summary dismissal.   | Number of Summary Dismissals   | 706     | 622     |
|   | Assess and finalise complaints that are deemed Summary Dismissals:   |         |         |
|   | 80% within one month   | 42%     | 68%     |
|   | 100% within two months   | 60%     | 81%     |
| <b>Investigation Matters:</b> 'own motion' investigation matters commenced by the Commissioner.   | Commence own motion investigations where information comes to the attention of the Commissioner that is in the public interest to commence an investigation into.  | 126     | 116     |
| <b>Investigations finalised:</b> number of conduct matters (complaints and own motion investigations) investigated and finalised which involve a disciplinary issue or a contravention of a relevant law (this figure does not include complaints received that are deemed Summary Dismissals - set out above). | Investigate and finalise conduct matters (investigations of complaints received and own motion matters - which are commenced without receipt of a complaint, but on information that comes to the attention of the commissioner by referral or otherwise). |         |         |
|   | Number of investigations completed   | 211     | 246     |
|   | Finalised:   |         |         |
|   | • 75% of conduct matters within six months   | 10.9%   | 52.4%   |
|   | • 100% within 18 months  | 51.18%  | 92.3%   |

| Service   | Performance target   | 2021-22 | 2020-21 |
|---|--|---------|---------|
| <p><b>Reconsiderations:</b> there is no power or obligation under the Act to reconsider a matter.</p> <p>However, it is good administrative decision-making and within the public interest to reconsider a statutory decision when requested, if the matter has not previously been reviewed, even if it is a significant impact on time and staff resources.</p> | Number of matters reviewed and reconsidered where appropriate.   | 50      | 67      |
| <p><b>Prosecutions and other enforcement:</b> prosecution of disciplinary matters or other enforcement action.</p>  | Number of new prosecutions allocated.  | 20      | 24      |
|   | Number of prosecutions finalised/decisions delivered.  | 25      | 17      |
| <p><b>ILP compliance audits:</b> ensure all Directors of an incorporated legal practice are contacted within one month of commencement of practice.</p>   | Number of initial self-assessment letters sent to directors of newly notified ILPs.  |         | 159     |
|   | Ensure every new ILPs receives an initial self-assessment letter within one month of receiving notice from the QLS.  |         | 100%    |
| <p><b>External engagement:</b> number of engagements with users of legal services, lawyers and stakeholders to help improve standards of conduct in the provision of legal services.</p>  | Complete six speaking engagements per year.  | 6       | 10      |
|   | Engage in consultation with the QLS regarding publication of guidance statements/electronic newsletters. Continually review website and publications for both content and accessibility. | 2       | 14      |

### Policy and strategy

The Commission's policies and guidelines are published to assist members of the profession and the public to understand the Commissioner's position on different areas of regulation. Regulatory guides are targeted at the profession to assist in understanding key areas of the Commissioner's focus, including guidance on the type of conduct that may result in disciplinary action or prosecution. The Commission's information sheets are targeted at consumers of legal services and the general public, to provide high level information about the regulation of the profession and what the Commission can and can't do.

The Commission's Strategic Plan 2022–2027 was developed over the reporting year. The *Strategic Plan 2023–2027* outlines the Commission's vision, objectives and priorities over the next five years. The plan reflects the work that has been undertaken to transform the Commission into an effective, efficient, and modern regulator. The Strategic Plan has been published on the Commission's website.

The Commission actively contributes to legislative reform in Queensland, particularly where this involves matters affecting the legal profession and its regulation. The most significant reform activity during the reporting period was the Commission's contribution to the drafting and consultation process of the *Personal Injuries Proceedings and Other Legislation Amendment Act 2022*. These amendments expanded the regulatory remit of the Commission to include oversight and enforcement of provisions designed to stop the practice of claim farming in Queensland.

The Commission has actively led the implementation of these reforms and worked collaboratively with the co-regulators at the Office of Industrial Relations and Motor Accident Insurance Commission in this process.

Throughout the reporting period, the Commission has also actively contributed, during consultation, to the Law Council of Australia's review of the Australian Solicitors Conduct Rules (ASCR) and the subsequent local jurisdictional consultation by the QLS as to implementation of the amended rules in Queensland.

The ASCR seek to provide uniform conduct rules that apply to solicitors across all jurisdictions in Australia. To apply in Queensland, any changes to the existing rules are developed by the QLS, including mandatory consultation, and formally presented for adoption under the process outlined in the Act. The current version of the ASCR published in 2012 is adopted in Queensland and review of these rules was due by September 2022. At the time of preparing this report, the 2012 ASCR were extended by regulation and continue to apply. This has allowed time for further consultation and consideration of appropriate amendments of the rules by the QLS.

Through the QLS, the Commission has highlighted key concerns and areas for improvement, to contribute to the QLS aim of ensuring that any amendment of the rules supports the maintenance of appropriate standards of ethical practise of law in Queensland.

## Financial reporting

### Management and transparency of our finances

The cost of administering the Commission's functions and powers under the Act in 2021-22

| Legal Services Commission | 2021-22<br>Original<br>Budget<br>\$ | 2021-22<br>Amended<br>Budget <sup>2</sup><br>\$ | 2021-22<br>Actual<br>\$ | 2022-23<br>Approved<br>Budget <sup>3</sup><br>\$ |
|---------------------------|-------------------------------------|---|-------------------------|--|
| Employment costs          | 3,840,300                           | 3,924,200                                       | 3,398,147               | 4,806,100  |
| Other costs <sup>1</sup>  | 1,623,500                           | 1,801,600                                       | 1,296,211               | 3,730,700  |
| <b>Total</b>              | <b>5,463,800</b>                    | <b>5,725,800</b>                                | <b>4,694,368</b>        | <b>8,536,800</b>                                 |

1 This figure includes brief-out costs of \$210,623.

2 In March 2022 the Cabinet Budget Review Committee approved funding of \$6.703M over 2022-26 for the enforcement of new measures to prevent undesirable billing practices by lawyers in speculative person injury claims. In 2021-22 the allocation was \$0.557M which was to be offset by \$0.295M (operational savings) to commence in April 2022.

3 This figure includes \$0.105 million approved capital.

### Penalties and costs

Where a matter has been successfully prosecuted, the Commissioner is entitled to a costs order, unless exceptional circumstances exist. As a statutory body and public entity, the Commission is conscious of the need to ensure public monies expended to protect the public are, whenever possible and appropriate, recovered in full.

The following table represents the Penalties and Costs awarded in favour of the Commission for the current and the previous reporting period, and the amounts received.

|                                    | QCAT<br>\$ | LPC<br>\$ | Courts<br>\$ | 2021-22<br>total<br>\$ | 2020-21<br>total<br>\$ | 2019-20<br>total<br>\$ |
|------------------------------------|------------|-----------|--------------|------------------------|------------------------|------------------------|
| <b>Penalties (QCAT/LPC/Courts)</b> |            |           |              |                        |                        |                        |
| Ordered                            | 10,000     | -         | -            | 10,000                 | 13,500                 | 40,750                 |
| Payments received                  | 7,500      | -         | -            | 7,500                  | 13,500                 | 41,850                 |
| Written Off                        | -          | -         | -            | -                      | 1,413                  | -                      |
| Payments pending at 30 June        | 5,000      | -         | 1,500        | 6,500                  | 4,000                  | 5,413                  |
| <b>Costs (QCAT/LPC/Courts)</b>     |            |           |              |                        |                        |                        |
| Ordered, agreed or assessed        | 139,533    | -         | -            | 139,533                | 339,010                | 111,208                |
| Payments received                  | 105,667    | 4,000     | -            | 109,667                | 273,970                | 138,376                |
| Written off                        | -          | -         | -            | -                      | -                      | 37,623                 |
| Payments pending at 30 June        | 223,918    | -         | 19,650       | 243,568                | 213,702                | 148,663                |

## Other

### Risk management and accountability

In addition to regular risk management and reporting obligations, the Commission continues to review, update where necessary, and report on the following matters:

- Workplace health and safety matters
- Building evacuation procedures
- Business continuity plan.

### Information and record keeping

The Commission's records and information systems are stored, maintained and disposed of in accordance with relevant legislation and State Government protocols.

The Commission understands the need for constant vigilance and improvement in this area. The Commission is undertaking an ongoing process of review and gap analysis of our information and record keeping systems, with the full knowledge that our current case management system needs to be improved and updated.

This has been impacted by a major IT upgrade by the QLS, which has affected the data-feeds to the Commission's case management system. The Commission, our case management system providers, the QLS and the QLS IT Team have worked diligently to ensure that accurate data was available for the purpose of this annual report and to ensure that useable data could be fed into the Commission's case management system.

Ongoing collaboration on the integrity of those data feeds is continuing to ensure the Commission receives the necessary data to discharge its statutory functions.

The ongoing work being undertaken to ensure the efficiency and operability of systems is paramount to the Commission being able to effectively and expeditiously discharge our responsibilities and meet service delivery expectations.

### Right to Information

There were no applications made under the *Right to Information Act 2009*. Three applications for access under the *Information Privacy Act 2009* were finalised.

### Human rights

The Commission treats all people with dignity and respect. The Commission is committed to protecting and promoting the human rights of all people as we help build a culture that encourages and respects human dignity. As a statutory body we have an obligation to act and make decisions in a way that is compatible with human rights and when making a decision to give proper consideration to human rights. The Commission has reviewed all decision-making processes, policies and guidelines to ensure their continued compatibility with human rights.

### Open Data

Without limiting our powers and obligations under the Act, the Commission aligns with the Department of Justice and Attorney-General's Open Data Strategy. For more information on the Open Data Strategy visit the Department's Open Data Portal.

### Queensland Language Services Policy

The Commission continued to provide access to translator services for people from non-English speaking backgrounds, and relay services for people with hearing and vision impairments.

### Interpreter services

Interpreter services are available for all Commission's publications and online information, and on request for Commission events and for activities undertaken by third parties on the Commission's behalf.

# Appendix A

## Abbreviations and acronyms

|   |   |
|---|---|
| BAQ   | Bar Association of Queensland   |
| Commission  | Legal Services Commission   |
| Commissioner                                      | Legal Services Commissioner   |
| Investigation matter/<br>Own motion investigation | Pursuant to the Act the Commissioner has power to commence an investigation without a formal complaint being made                       |
| ILP   | Incorporated Legal Practice   |
| LPAB  | Legal Practice Admissions Board   |
| LPC   | Legal Practice Committee  |
| LPD   | Legal Practitioner Director (of an ILP or MDP)  |
| LSC   | Legal Services Commission   |
| MDP   | Multi-disciplinary Partnership  |
| PIPA  | <i>Personal Injuries Proceedings Act 2002</i>   |
| PM  | Professional Misconduct   |
| QCAT  | Queensland Civil and Administrative Tribunal  |
| QLS   | Queensland Law Society  |
| RTI   | Right to Information  |
| The Act   | <i>Legal Profession Act 2007</i>  |
| The Attorney-General                              | Attorney-General of Queensland, Minister for Justice Minister for Women and Minister for the Prevention of Domestic and Family Violence |
| The Department                                    | The Department of Justice and Attorney-General  |
| The Director-General                              | Director-General, Department of Justice and Attorney-General  |
| UPC   | Unsatisfactory Professional Conduct   |

# Appendix B

## Compliance checklist

| Summary of requirements                      |  | Basis for requirement   | Annual report reference |
|--|--|---|-------------------------|
| <b>Letter of compliance</b>                  | A letter of compliance from the accountable officer or statutory body to the relevant Minister/s | ARRs – section 7  | page ii                 |
| <b>Accessibility</b>                         | Table of contents  | ARRs – section 9.1  | page i                  |
|  | Glossary   | ARRs – section 9.1  |                         |
|  | Public availability  | ARRs – section 9.2  | inside cover            |
|  | Interpreter service statement  | <i>Queensland Government Language Services Policy</i><br>ARRs – section 9.3 | inside cover            |
|  | Copyright notice   | <i>Copyright Act 1968</i><br>ARRs – section 9.4                             | inside cover            |
|  | Information Licensing  | <i>QGEA – Information Licensing</i><br>ARRs – section 9.5                   | inside cover            |
| <b>General information</b>                   | Introductory Information   | ARRs – section 10.1   | Page 27                 |
| <b>Non-financial performance</b>             | Government's objectives for the community and whole-of-government plans/specific initiatives     | ARRs – section 11.1   |                         |
|  | Agency objectives and performance indicators   | ARRs – section 11.2   | Pages 25–27             |
|  | Agency service areas and service standards   | ARRs – section 11.3   |                         |
| <b>Financial performance</b>                 | Summary of financial performance   | ARRs – section 12.1   | Page 29                 |
| <b>Governance – management and structure</b> | Organisational structure   | ARRs – section 13.1   | Pages 23–24             |
|  | Executive management   | ARRs – section 13.2   | Pages 23–24             |
|  | Government bodies (statutory bodies and other entities)  | ARRs – section 13.3   |                         |
|  | Public Sector Ethics   | <i>Public Sector Ethics Act 1994</i><br>ARRs – section 13.4                 | Page 24                 |
|  | Human Rights   | <i>Human Rights Act 2019</i><br>ARRs – section 13.5                         | Page 30                 |
|  | Queensland public service values   | ARRs – section 13.6   |                         |

| Summary of requirements                                |   | Basis for requirement  | Annual report reference                                       |
|--|---|--|---|
| <b>Governance – risk management and accountability</b> | Risk management                               | ARRs – section 14.1  | Page 30   |
|  | Audit committee                               | ARRs – section 14.2  |   |
|  | Internal audit                                | ARRs – section 14.3  |   |
|  | External scrutiny                             | ARRs – section 14.4  |   |
|  | Information systems and recordkeeping         | ARRs – section 14.5  | Page 30   |
|  | Information Security attestation              | ARRs – section 14.6  | Page 30   |
| <b>Governance – human resources</b>                    | Strategic workforce planning and performance  | ARRs – section 15.1  | Page 25   |
|  | Early retirement, redundancy and retrenchment | <i>Directive No.04/18 Early Retirement, Redundancy and Retrenchment</i><br>ARRs – section 15.2 |   |
| <b>Open Data</b>                                       | Statement advising publication of information | ARRs – section 16  |   |
|  | Consultancies                                 | ARRs – section 33.1  | <a href="https://data.qld.gov.au">https://data.qld.gov.au</a> |
|  | Overseas travel                               | ARRs – section 33.2  | <a href="https://data.qld.gov.au">https://data.qld.gov.au</a> |
|  | Queensland Language Services Policy           | ARRs – section 33.3  | <a href="https://data.qld.gov.au">https://data.qld.gov.au</a> |
| <b>Financial statements</b>                            | Certification of financial statements         | FAA – section 62<br>FPMS – sections 38, 39 and 46<br>ARRs – section 17.1                       |   |
|  | Independent Auditor’s Report                  | FAA – section 62<br>FPMS – section 46<br>ARRs – section 17.2                                   |   |

**FAA** Financial Accountability Act 2009

**FPMS** Financial and Performance Management Standard 2019

**ARRs** Annual report requirements for Queensland Government agencies







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