



Performance Audit Report

**The Law Society Council,
the Bar Council
and the
Legal Services Commissioner**

*A Review of Activities Funded by the
Statutory Interest Account*

The Members of the Legislative Assembly
Parliament House
SYDNEY NSW 2000

In compliance with Section 38E of the *Public Finance and Audit Act 1983*, I present a report to the Legislative Assembly titled **the Law Society Council, the Bar Council and the Legal Services Commissioner: *A Review of Activities Funded by the Statutory Interest Account.***

A C HARRIS

Sydney
June 1997

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Table of Contents

Executive Summary	1
Recommendations	9
1. The Audit	13
1.1 Audit Scope Under the Legal Profession Act	14
1.3 Cost of the Audit	15
2. The Accounts	17
2.1 Solicitors' Clients' Monies	18
2.2 Statutory Deposit Account	18
2.3 Statutory Interest Account	19
2.4 Solicitors' Trust Account Fund	19
2.5 Types of Expenditure from SIA and STAF	20
3. Controls Over Income	25
3.1 Controls Over Income	26
4. Controls Over Expenditure	29
4.1 Budgeting and Expenditure	30
4.2 Supplementation of Legal Aid	32
4.3 Compliance of Expenditure with the Act	34
4.5 Benefit to the Profession	41
4.6 The Audit Office Comments	46

5. The Liability of the SIA	49
5.1 Introduction	50
5.2 The Liability of the SIA	51
5.3 Total Projected Expenditure	52
5.5 Other Issues	54
6. Performance Issues	55
6.1 Introduction	56
6.2 Complaint Handling Criteria	57
6.3 Complaint Handling Procedures	58
7. Accountability	71
7.1 Accountability to Parliament	72
Appendices	75
Appendix 1 Payments from the SIA	76
Appendix 2 The Office of the Legal Services Commissioner	78
Appendix 3 Complaint Statistics	79
Glossary of Terms	80

Executive Summary

Executive Summary

The Audit

Section 67 of the Legal Profession Act 1987 (the Act) requires the Auditor-General to carry out a 'special' audit of:

- the activities of the Legal Services Commissioner and the Law Society Council and the Bar Council for which costs are payable from the Statutory Interest Account (SIA); and
- the present and future liabilities of the Account for the payment of those costs.

The Audit Office has undertaken a performance audit in accordance with the abovementioned provisions.

Interest on Clients' Monies

Solicitors, as a matter of business practice, receive and hold monies on behalf of their clients. These monies are deposited in trust accounts with banks throughout New South Wales.

Solicitors have a fiduciary duty towards their clients. Solicitors are to act for, and for the benefit of, their clients.

Where solicitors advise their clients and/or receive instructions from them, solicitors can invest monies held in trust to earn interest specifically on their clients' behalf.

Where clients' monies are not invested on their behalf, whether because the clients have not been advised or because they do not wish to have their monies invested for their benefit, the monies are retained in non-interest bearing trust accounts. The aggregate of these accounts as at 31 March 1996 was approximately \$316m.

Where monies are not invested on their clients' behalf, the Act requires a certain portion of those monies to be deposited in a separate account. That account is known and referred to as a Statutory Deposit Account (SDA).

There are approximately 1,300 active SDAs held by banks throughout NSW and as at 31 March 1996 the funds in those accounts amounted to \$101m.

Statutory Interest Account The Act provides that monies deposited in the SDAs may be invested by the Law Society. Interest earned on money so invested is to be credited to an account titled Statutory Interest Account (SIA) which is maintained and administered by the Law Society of New South Wales (the Law Society). The balance of accumulated interest not distributed under the Act as at 30 June 1996 was \$6m.

Solicitors' Trust Fund Account In respect of the residual trust accounts held by solicitors, (\$215m as at 31 March 1996) the Law Society has arranged with the banks to receive 'gratuitous' payments on account of interest. These 'gratuitous' amounts are paid to an account known as Solicitors' Trust Account Fund (STAF).

The STAF is not in the State's accounts and it is not subject to legislative regulation. It is governed by a Trustee of three, being the President and the Treasurer of the Law Society, and a representative of the Attorney General. The money in this account, to a large extent, is used for the benefit of the law profession.

The STAF arrangement has met with considerable success. As at 30 June 1996 the undistributed balance of this account was \$49m.

SIA Income In respect of income due to the SIA, The Audit Office has some concern that the current arrangements introduced and followed by the Law Society may not necessarily ensure that all monies that should be deposited in the SDAs are in fact deposited.

By-and-large, the Law Society relies on advice from the banks as to the number, the amount standing to the credit of and the amount of interest due on those accounts. The Law Society does not reconcile either the number of SDAs that are and should be open, or the balance of those accounts.

The level of checking by the Law Society is considered not sufficient to provide adequate assurance that solicitors are depositing the correct amount of moneys to SDAs in accordance with the Act.

Given there was \$316m in solicitor trust accounts as at 31 March 1996 and \$101m deposited to Statutory Deposit Accounts, any material failure by solicitors to comply with the Act, and any major error by the banks in the disclosure of information, would significantly impact on income flowing to the SIA.

SIA Expenditure The Audit Office has also some concern with the procedures adopted for the payment of expenditure out of the SIA.

The Act prescribes the type of expenditure for which the fund from SIA may be used. A full list of these is provided at Appendix 1 to this Report. These payments can be described broadly as ‘discretionary’ and ‘non-discretionary’.

Non-discretionary costs are costs that are ‘incurred from time to time’ by authorised parties under the Act and the Act requires the Law Society, as administrator, ‘to pay’ those expenses.

These costs comprise the majority of SIA expenditure including reimbursements to the Law Society Council and the Bar Council for costs incurred in relation to complaints and disciplinary functions.

Discretionary costs are those authorised by the Act which the Law Society is to pay from time to time as determined by the Law Society Council and approved by the Attorney General.

The major discretionary costs include the Legal Services Commissioner (LSC) for costs incurred in relation to the monitoring and review of complaints and disciplinary functions of the Councils, the Solicitors’ Fidelity Fund, legal education and supplementation of the Legal Aid Fund established under the Legal Aid Commission Act 1979.

Supplementation of Legal Aid Fund In respect of the supplementation of Legal Aid, the Act stipulates that the Law Society must not determine and the Attorney General must not approve other ‘discretionary’ payments unless satisfied that the payment of those amounts will not reduce the amount of funds available from the ‘Account’ for supplementation of the Legal Aid Fund.

The interpretation provided to The Audit Office by the Solicitor General on this aspect is that the Attorney General should not approve other discretionary payments from the Account unless “sufficient” funds remain available for Legal Aid purposes.

The Solicitor General considered that in this regard “sufficient” needs to be determined with regard to size of the pool of funds and the existence and number of those other discretionary purposes.

The Audit Office notes that over the last two years, despite the fact that discretionary funds have been allocated from the Account for other purposes, no supplementation has been made to the Legal Aid Fund.

The Audit Office is aware that in 1995-96 supplementation to Legal Aid (some \$10m) has been made from the STAF and that the Law Society believes the intentions of the Act will be satisfied if Legal Aid funding is maintained at the same level as previous years irrespective of the source of funding.

In response to a draft report, the Director General of the Attorney General's Department also contended that a literal interpretation of the section would create a direct inconsistency, a view with which the Solicitor General agreed. Furthermore, the Director-General was of the view that the intention of Parliament may be satisfied by payment from STAF.

The Audit Office contends, however, that:-

- those views would seem to support the argument that STAF is regarded as a surrogate to the SIA, in which case benefits could be arrived by combining the two accounts
- the Solicitor General's opinion was not canvassed on the basis that non-discretionary payments were to be made without any allocation for Legal Aid from the SIA, and the payment of discretionary expenses from the SIA ahead of supplementation of Legal Aid may constitute a breach of the Act. If necessary, the question should be referred back to the Solicitor General for consideration.

Interpretation of the Act

The Audit Office also has concern in respect of some of the types of expenditure met from the SIA accounts.

The Act is open to interpretation as to the costs that are subject to payment from the SIA account. As a consequence, The Audit Office was not able to conclude whether certain costs incurred by the LSC and the Councils and reimbursed from the SIA, are in compliance with the Act.

Conflict of Interest It would also appear that there is a potential conflict of interest between the Law Society's roles as a professional body acting in the interest of its members, that of an administrator and that of a beneficiary of money earned on clients' money.

The Audit Office considers that there is a need to establish clearer and more transparent guidelines to determine the type of expenditure that may be met from the SIA.

The Audit Office notes that to a large extent the STAF account is used to supplement payments of accounts that are also funded from the SIA. Under these circumstances it would seem reasonable if the management of the funds were to be combined and put under the same statutory requirements.

A similar recommendation was made by the Parliamentary Committee of Public Accounts in Queensland. That Committee recommended that the function of

representing the legal profession on one hand, and managing funds on behalf of government on the other ... be separated.

This would address the concern that the Law Society is collecting interest on clients' monies which might rightfully belong to clients. Technology is at a stage where the calculation of interest earned on clients' money is easier than it may have been in the past.

The Audit Office also considers that the ownership of a company (Law Cover Pty Ltd) by the Law Society that insures legal practitioners against personal liability for damages as a result of proven or admitted negligence, creates, at least the appearance of, a conflict of interest.

On the one hand the Law Society has a statutory obligation to investigate complaints and institute disciplinary procedures against solicitors suspected of misconduct, on the other hand, through the Law Cover Pty Ltd, it has a role of defending solicitors whose negligent action may represent misconduct.

Liability of the SIA

The Audit Office was also required to comment on the present and future liability for the payment of costs from the SIA pursuant to the Act.

The Audit Office is not in a position to comment authoritatively on future liabilities. Liabilities depend on both income and expenditure in the future.

The income of the SIA largely depends on the extent to which clients of solicitors do not elect to have their money invested on their behalf. In this regard The Audit Office notes that there has been a decline in the number of trust accounts held by solicitors. On the other hand, there is no indication that the costs to be met from SIA would decline.

Estimates prepared by the Law Society of its projected income and expenditure indicate a shortfall of income in excess of \$20m for the financial years 1996-97 to 1998-99 inclusive.

The Audit Office has no reason to dispute those estimates.

The Law Society has advised that without supplementary funding from the STAF, the income from the SIA would be insufficient to meet all the expenditure on Legal Aid, legal education, the Law Foundation and the Solicitors' Fidelity Fund. This again would support the need to examine the benefit of merging what are currently two separate accounts, the SIA and STAF.

Management of Complaints

The audit also examined the complaint handling procedures of the Legal Services Commissioner (LSC), the Law Society Council and the Bar Council. These procedures were evaluated against nine criteria. Details of the examinations and observations are contained in the Report.

Management information, by which the performance of the complaint handling process/procedures of the investigating organisations might be judged, is considered not adequate.

As a consequence, The Audit Office was not in the position to form an opinion on the economy, efficiency and effectiveness of the LSC, the Law Society Council and the Bar Council in regard to complaint handling.

It is noted that the LSC has developed certain performance indicators in regard to the management of complaints which will be included in its Annual Report for 1996-97.

The Audit Office considers also that it would be desirable to implement a formal mechanism whereby the basis of complaints would feed into the Law Society's legal education program.

***Legal Services
Commissioner***

At present, the LSC is funded from the SIA which is in turn administered by the Law Society. This arrangement can give rise to a potential, or at least the appearance of a, conflict of interest.

The Audit Office considers that, in order to sustain the independence of the LSC, the funding arrangements of the Commissioner should be reviewed so as to separate it from any involvement of the Law Society.

Accountability

Audited financial statements of the SIA are presented to the Attorney General who in turn tables them in Parliament.

There is, however, no statutory obligation to prepare or table those accounts.

It is considered that the reporting on the administration of the SIA to the Attorney General and to Parliament be formalised in the Act.

Recommendations

The Audit Office considers that having regard to the audit findings and the recommendations by the Parliamentary Committee of Public Accounts in Queensland, the Governments should review the arrangements relating to the administration of solicitors' clients' monies in New South Wales. The Audit Office considers that such a review should examine particularly the separation of the Law Society's role as an administrator of funds not invested on clients' behalf from that of representing the legal profession.

In respect of the current arrangements, The Audit Office recommends that:-

- where interest is not returned to clients, the collection of all interest and management of all funds from this source be arranged under one statutory account**
- clearer and more transparent guidelines be established to regulate expenditure from the SIA and to distinguish between those purposes which ought to be the responsibility of the legal profession and those which are to be paid out of income derived from clients' funds**
- complaint handling criteria (and where appropriate, common criteria) criteria be developed by all the investigating organisations and performance against criteria be measured and reported within the Annual Reports of those organisations**
- in order to avoid any possible conflict of interest, or the appearance thereof, between the Law Society and the Legal Services Commissioner, the funding arrangements of the Commissioner be reviewed so as to separate it from any involvement of the Law Society**
- the current arrangements relating to the reporting of the administration of the SIA to the Attorney General and to Parliament be formalised in the Act**
- the potential conflict of interest between the Law Society Council's complaint handling role funded through the SIA and the Law Society's involvement in defending solicitors, whose negligent action may represent misconduct, through ownership of Law Cover Pty Ltd be addressed.**

Response to the Report by the Attorney General

I am writing to you in response to the performance audit, 'A Review of Activities Funded by the Statutory Interest Account'.

I have examined the report and I shall ensure that the recommendations receive careful consideration. I have read the comments of the Director General of the Department on the draft report dated 23 April 1997, and I support the comments of the Department. At this stage, I propose to confine my formal comment to the interpretation of section 67(3A).

In my view, a literal reading of the subsection would undermine the obligation of the Law Society Council to make payments to the other beneficiaries of the Statutory Interest Account, pursuant to section 67. The provision therefore creates a direct inconsistency.

The advice of the Solicitor General, to which you have referred, indicated that in circumstances where a literal interpretation of a provision would create a direct inconsistency, it was appropriate to have regard to speeches in Parliament concerning the provision to ascertain the intention of its enactment. The Solicitor General referred in particular to comments made by Mr J Hatton, the then Member for the South Coast, in support of the provisions which indicated that the intention was that the provision be discretionary and was targeted towards ensuring that payments from the SIA for discretionary purposes (in particular, payments to fund the Office of the Legal Services Commissioner) did not lead to a reduction in funds allocated to legal aid.

The Solicitor General advised that "the effect of the section is to require the Attorney General not to approve payments from the Statutory Interest Account unless sufficient funds remain for legal aid" and indicated that since the purposes for which monies may be spent from STAF correspond to a number of provisions of the SIA, those payments should be taken into account in determining whether sufficient funds had been provided for legal aid. It has been the practice of the Attorney General's Department to draw attention to such payments when submitting the papers to the Attorney General at the time he is considering approval of SIA determinations.

Finally, payments made from STAF in recent years to supplement legal aid are at a level that could not be met from SIA funds alone. Nevertheless, having regard to the comments and recommendations of the report, I propose to bring forward legislative amendments in the next Parliamentary Session, to place the question of the use of the Statutory Interest Account as a source of funding for legal aid beyond doubt.

Many of the recommendations in the report appear to warrant action being taken and I am currently considering the most appropriate response, having regard to the policy considerations which are set out in the report. I look forward to providing a detailed response after the report has been tabled.

Signed

**J W Shaw QC, MLC
ATTORNEY- GENERAL**

Date: *11 June 1997*

1. The Audit

1.1 Audit Scope Under the Legal Profession Act

The Legal Profession Act 1987, was amended by the Legal Profession Reform Bill initiated by the then Attorney General in 1993. The amended Legal Profession Act 1987 (**the Act**) came into effect on 1 July 1994.

The objectives of the Act include:

- reforms to the structure and regulation of the legal profession so as to facilitate its regulation in the public interest
- reforms to the complaints and disciplinary system including the appointment of an independent statutory officer (the Legal Services Commissioner) to receive complaints and supervise the handling of complaints by the Law Society Council and the Bar Council.

Pursuant to Section 67(3B) of the Act, the Auditor-General is required to conduct a special audit of:

- the activities of the Legal Services Commissioner (LSC), the Law Society Council and the Bar Council for which costs are payable from the Statutory Interest Account (SIA)
- the present and future liability of the SIA for payment of those costs.

The Audit Office has undertaken a performance audit in accordance with the above statutory provisions.

The activities reviewed include the management of the disciplinary functions of the LSC and the above mentioned Councils and the role played by the LSC in monitoring the Councils' performance of these functions. These are the major activities of the above mentioned organisations which are funded by the SIA.

The audit also reviewed the adequacy of controls over income of the SIA and expenditure procedures for compliance with the Act.

The report contains comments on a number of other issues relevant to the current and future operation of the SIA.

The audit did not consider the appropriateness of the substantial interest earnings on the solicitors' clients' monies being used for the benefit of the legal profession and the Government. This is because the issue is seen as being outside the scope of the current audit. It is a matter which can be considered in any subsequent audit of the SIA and STAF.

1.2 Acknowledgement

The Audit Office wishes to acknowledge the valuable assistance provided throughout the audit by staff of the Attorney General's Department, the Office of the Legal Services Commissioner, the Law Society of NSW and the Bar Association.

1.3 Cost of the Audit

The total cost of the audit is as follows:

	\$
Direct salary and overhead costs	196,088
Value of unpaid overtime (at standard rates only)	36,013
Printing (estimated cost)	5,000
Total Cost	<u><u>\$237,101</u></u>

2. The Accounts

Solicitors' clients' monies not specifically invested for the benefit of the clients, earn income that is administered by the Law Society.

Part of the income is administered in accordance with the Legal Profession Act, the other in accordance with a Trust Deed. To a certain extent, these monies are used for the benefit of, or on behalf of, the legal profession.

2.1 Solicitors' Clients' Monies

Solicitors, as a matter of business practice, receive and hold monies on behalf of their clients. Clients' monies are deposited in trust accounts with banks throughout New South Wales.

Solicitors have a fiduciary duty towards their clients. Solicitors are to act for, and for the benefit of, their clients. Accordingly, solicitors should advise clients of their option to earn interest on trust monies and where feasible, provide clients with the opportunity to earn interest.

Where solicitors advise their clients and/or receive instructions from them, clients' monies are invested on behalf of their clients.

Where clients' monies are not invested on their behalf, whether because the clients have not been advised or because the clients do not wish to have their monies invested for their benefit, the monies are retained in non-interest bearing trust accounts.

The aggregate of non-interest bearing trust accounts as at 31 March 1996 was approximately \$316m.

2.2 Statutory Deposit Account

Where monies are not invested on their clients' behalf, the Legal Profession Act 1987 (the Act) requires a certain portion of those monies to be deposited into a separate account. Currently, this represents 100% of the minimum balance of fund held in trust over a 12 month period. That account is known and referred to as a Statutory Deposit Account (SDA).

There are approximately 1,300 active SDAs held by approximately fifteen banks throughout NSW and as at 31 March 1996 the funds in those accounts amounted to \$101m.

2.3 Statutory Interest Account

The Act provides that monies deposited in the SDAs may be invested by the Law Society. Interest earned on money so invested is to be credited to an account titled Statutory Interest Account (SIA) which is maintained by the Law Society.

During the 1995/96 financial year interest income credited to the SIA was \$8.4m. The balance of accumulated interest not distributed under the Act as at 30 June 1996 was \$6m.

The Law Society is the administrator of the SIA.

2.4 Solicitors' Trust Account Fund

In respect of clients' monies not otherwise invested, the solicitors continue to hold those monies in non-interest bearing trust accounts which carry no interest for the SIA.

The balance of these accounts, as at 31 March 1996, was \$215m.

In 1984 the Law Society sought to gain a share of benefits that was derived by the banks from their use of the monies deposited in these interest free trust accounts.

As a result of that negotiation banks pay the Law Society periodically an agreed percentage based on the minimum monthly balances of non-interest bearing trust accounts held. The Law Society refers to these payments as a "*gratuitous payment*" and it is deposited into an account known as Solicitors' Trust Account Fund (STAF).

The STAF arrangements met with considerable success. The amount of interest credited to the STAF account was \$14m during the financial year 1995/96, with the undistributed balance of \$49m as at 30 June 1996.

legislative regulation. Although the scheme was originally approved by the then Attorney General and exists subject to the Attorney General's continuing approval, it is governed by a Trustee of three. They are the President and the Treasurer of the Law Society, and a representative of the Attorney General.

Monies from the STAF account can only be spent in accordance with the Trust Deed of the STAF and expenditure must be agreed to unanimously by the Trustees.

The purposes for which monies may be spent from the STAF correspond, to a large extent, to the provisions of the Act in regard to the SIA.

The Law Society is the administrator of the STAF also.

2.5 Types of Expenditure from SIA and STAF

SIA The Act defines how the interest earned on monies deposited to the SIA are to be used.

In broad terms, although not so described in the Act, SIA expenditure can be described as discretionary or non-discretionary payments.

The Act would appear to provide that priority be given to firstly non-discretionary costs and secondly Legal Aid over other discretionary costs.

Non-Discretionary Costs Non-discretionary costs are those costs incurred by authorised parties for purposes authorised by section 67(2)(a) of the Act. The Act requires that the Law Society as administrator “*to pay*” these costs.

These costs include reimbursement to the Law Society Council and the Bar Council for costs incurred in relation to complaints and disciplinary functions.

Discretionary Costs Discretionary costs are those authorised by Section 67(2)(b) of the Act which the Law Society is to pay as from time to time as determined by the Law Society Council and approved by the Attorney General.

The major discretionary costs include the LSC for costs incurred in relation to the monitoring and review of complaints and disciplinary functions, the Solicitors’ Fidelity Fund, legal education and supplementation of the Legal Aid Fund established under the Legal Aid Commission Act 1979.

STAF In respect of the STAF, the Trust Deed specifies the following purposes for which monies may be spent. With the exception of expenses relating to the ‘expenses and outgoings’ of the STAF Trust Fund, the others are also listed as expenditure to be funded from the SIA.

The corresponding sections of the Act referring to expenditure from the SIA are indicated in brackets:

- supplementation of Legal Aid Fund (as per Section 67(3)(a))
- supplementation of Solicitors’ Fidelity Fund (as per Section 67(3)(b))
- the promotion and furtherance of the objectives of The Law Foundation of NSW (as per Section 67(3)(g))
- the promotion and furtherance of legal education in NSW (as per Section 67(3)(f))
- expenses and outgoings of the Trust Fund.

A brief description of some of the expenditure authorised under the SIA and those relating to the STAF are outlined below. To a large extent monies from both the SIA and from the STAF are used for the benefit of, or on behalf of, the law profession.

The Legal Services Commissioner

The main role of the Legal Services Commissioner (LSC) is to receive complaints against lawyers and to monitor the handling of complaints and disciplinary functions of the Councils. The LSC may institute proceedings before the Legal Services Tribunal (see below).

It is funded by the SIA. During the 1995/1996 financial year the LSC received \$1.1m from the SIA.

The Professional Councils

The Law Society Council and the Bar Council essentially represent professional associations for solicitors and barristers respectively.

The Councils receive funding from the SIA to cover expenses incurred in handling and investigating complaints against members and in instituting disciplinary action where appropriate.

The Law Society Council and the Bar Council received \$3.1m and \$0.5m respectively from the SIA during the 1995/96.

The Legal Services Tribunal Each of the above parties may institute proceedings with the Legal Services Tribunal against legal practitioners.

The Tribunal holds hearings and makes determinations in respect to misconduct issues. The Tribunal is administered by the Attorney General and expenses are paid from the SIA. The Tribunal incurred costs of \$649,000 for 1995-96.

Legal Aid Commission The Legal Aid Commission provides to the public, under prescribed circumstances, legal aid in civil, criminal, family and administrative law matters.

The Act provides for the SIA to provide funds for Legal Aid Commission however in practice, supplementation comes from the non statutory STAF account (\$10.3m 1995-96 financial year).

The Law Foundation The Law Foundation of New South Wales was incorporated by the Law Foundation Act 1979. Its priority goal is to improve access to the law and the Legal System.

The Foundation receives under Section 67(4) of the Act, 10% of the interest earned on deposits made under Section 65 over the whole year. The most recent payment made from the SIA in accordance with this section in 1996 amounted to \$813,000.

As well as the above payment the Act allows payments for the promotion and furtherance of the objectives of the Law Foundation. As discussed below these types of payments are made from the STAF instead of the SIA and in the 1995/96 financial year such payments amounted to \$2.8m.

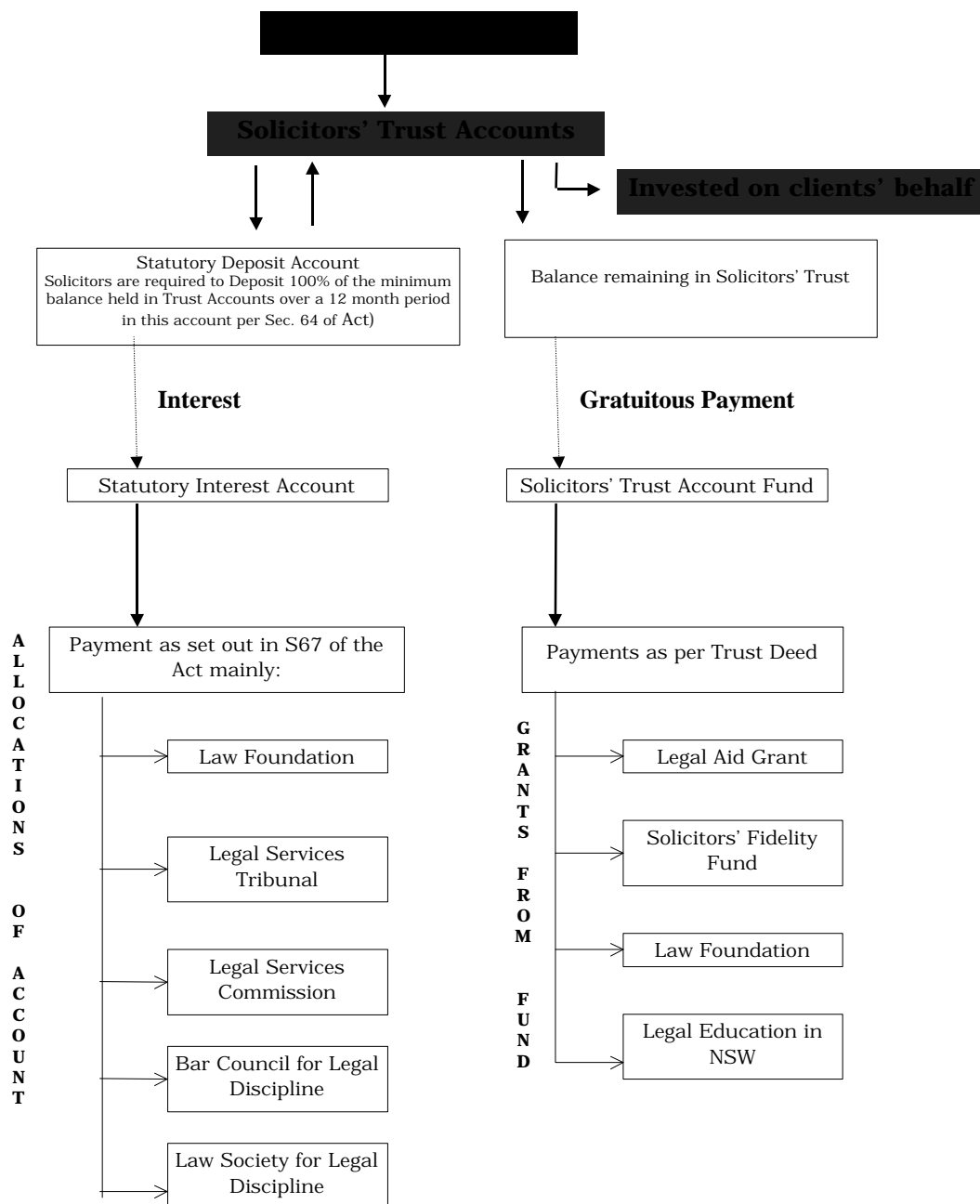
Fidelity Fund The Fidelity Fund was established by the Act in 1935 and was originally funded solely by levies on lawyers. The Fund makes provision for payment of losses by clients arising from defalcations by solicitors in the course of legal practice, and the Act describes the circumstances where compensation may be paid.

The Act provides for the supplementation of the fund from the SIA although in practice and as discussed below, supplementation is from the STAF (\$5.4m for the year ended 30 June 1996).

Legal Education The Act also provides for costs incurred in the promotion and furtherance of legal education to be paid from the SIA. In practice costs are paid from the STAF.

The majority of costs for legal education have been incurred by the College of Law, a subsidiary of the Law Society.

The flow of clients' fund, including the possible use of monies earned on those funds, is described in the following diagram.



3. Controls Over Income

Overview

It is possible that, as a consequence of the difficulties encountered with the proliferation of the number of accounts that require to be checked and the controls adopted by the Law Society, the SIA may not be receiving all the income that it is entitled to receive in accordance with the Act.

3.1 Controls Over Income

As stated earlier, the SIA derives income from monies invested by the Law Society standing to the credit of the Statutory Deposit Accounts.

The main checking carried out by the Law Society as to the amount of interest to be credited to the SIA account is to check interest calculations on bank balances notified by banks based on rates of interest agreed between the Law Society and the banks.

The Law Society does not automatically check:

- that the amount calculated and deposited by solicitors in SDAs is in compliance with the Act
- the accuracy of information provided by the banks in regard to the number of Statutory Deposit Accounts (SDAs) in existence.

The Law Society uses trust inspectors to undertake inspections on a sample basis to ascertain compliance by solicitors with the Trust Account Regulations and other legal requirements.

Although the inspection is mainly directed towards fraud detection rather than the verification and compliance of SDA details, inspectors will check the balance of a SDA notified to the Law Society by a bank against the balance declared by a solicitor.

A trust inspector may, if time permits, check that the solicitor has deposited the correct amount of money into a SDA in accordance with Section 64 of the Act.

Observations

- The Audit Office considers that the above arrangements contain control weaknesses to the extent that the Law Society is not in the position to keep track of:
 - ◇ the opening and closing of SDAs and hence ascertain that all such accounts are accounted for
 - ◇ balance of funds held in the SDAs.

As a consequence, the Law Society is not in the position to verify the completeness of income to the SIA.

The Law Society is of the opinion that due to the large number of active statutory deposits (1300) and the number of legal firms (3000) practising in New South Wales, any steps to improve the level of assurance over the accuracy of income to the SIA will present practical problems and result in increased costs to the SIA.

Given that as at 31 March 1996 there was \$316m in solicitors' trust accounts and \$101m deposited to Statutory Deposit Accounts, any failure by solicitors to comply with the Act and any major error by the banks in the disclosure of information would have a material impact on income flowing to the SIA.

The Audit Office considers that in order to provide greater assurance over income to the SIA, the Law Society should:

- ◇ review the sufficiency of compliance testing to provide assurance that solicitors are complying with the statutory requirement in regard to Statutory Deposit Accounts
- ◇ undertake a periodic reconciliation of information provided by the banks for Statutory Deposit Accounts with the records of solicitors.

The Audit Office does not consider that the absence of any undetected errors as claimed by the Law Society is a reason for not establishing better controls over the accuracy of income.

4. Controls Over Expenditure

Overview *The procedures adopted to administer expenditure do not necessarily ensure adequate control nor compliance with the Act. It would appear that the Act has been breached to the extent that no supplementation has occurred from the SIA to Legal Aid.*

There also seems to be a conflict of interest between the Law Society's role as a professional guild for lawyers and as an administrator of clients' monies on behalf of the Government. It is considered the SIA should be administered by an independent administrator.

4.1 Budgeting and Expenditure

Existing Arrangements Over Expenditure The procedures for allocating funds and reimbursing expenditure from the SIA, as was advised and observed during the conduct of audit, are described below.

Budgeting and Payment Procedures

1. On a six monthly basis the Law Society seeks budget submissions from the Bar Association and the LSC as beneficiaries of the SIA on funding requirements for the next six months for SIA purposes. The submissions include both discretionary and non-discretionary costs. The Law Society Council also prepares a submission on behalf of itself as a beneficiary of the SIA.
2. The Law Society reviews the submissions for reasonableness in consultation with the Attorney General's Department.
3. At the conclusion of this process, the Law Society forwards budget submissions to the Law Society Council and to the Trustees of the STAF for consideration and approval.
4. The budget submissions are reviewed by the Trustees of the STAF and the Law Society Council. Essentially three people are responsible for this process being the:
 - ◆ Attorney Generals' representative as a STAF Trustee
 - ◆ President and Treasurer of the Law Society in their capacity as trustees of the STAF and members of the Law Society Council.

Budgeting and Payment Procedures (*continued*)

The Law Society has advised that:

“Trustees, the Council of the Law Society and the Attorney General (that is a representative thereof) review budget estimates prepared by those involved in regulatory areas including the Legal Services Commissioner, the Legal Services Tribunal, the Law Society of NSW and the Bar Association. Items of expenditure are questioned and reviewed an approach which is consistent with transparent procedures and sound management practices.”

5. The above parties decide as to how much funding will be allowed to each beneficiary for both discretionary and non-discretionary expenditure.
6. As part of this process the parties decide on funding allocations from the STAF and the SIA accounts. Normally all non-discretionary costs are funded from the SIA while discretionary costs are apportioned between the SIA and the STAF.
7. Once agreement is reached the trustees of the STAF formally approve specific funding allocations from the STAF subject to other agreed specific funding allocations being made from the SIA.
8. The Law Society Council formally resolves to approve funding allocations from the SIA and then seeks the approval of the Attorney General in regard to proposed discretionary expenditure.
9. The Attorney General formally approves funding allocations for discretionary costs allocations and also “notes” all other SIA funding allocations (that is non-discretionary costs) over which the Attorney General has no statutory power.
10. On a periodic basis the beneficiaries seek reimbursement from the SIA in respect to these costs.
11. The Law Society reviews samples of expenses claimed by a beneficiary for compliance with the Act and provided the expenditure does not exceed that beneficiary’s funding allocation as discussed above, the beneficiary is reimbursed from the SIA.

Budgeting and Payment Procedures (*continued*)

12. Discretionary allocation costs to be paid from the STAF Account such as allocations to Legal Aid, Fidelity Fund, the Law Foundation and the College of Law are normally paid in advance of expenditure in a lump sum after all funding procedures are complete. Special allocations such as grants to Universities which provide legal education may also be made from the STAF beneficiaries as determined by the STAF trustees.

There are a number of aspects of the above procedure that are worthy of comment. These are explored in more detail in the remainder of this section of the report.

4.2 Supplementation of Legal Aid

One of the discretionary payments from the SIA is the supplementation of Legal Aid.

In respect of discretionary payments, the Act requires the Law Society

... to pay such amounts as are from time to time determined by the Law Society Council and approved by the Attorney General.

Legal Aid to Receive Priority

However, section 67(3A) of the Act provides that;

The Law Society must not determine, and the Attorney General must not approve, that amounts to be paid from the Statutory Interest Account unless satisfied that the payment of those amounts will not reduce the amount of funds available from the Account [the SIA] for the supplementation of the Legal Aid Fund established under the Legal Aid Commission Act 1979.

The Solicitor General has provided The Audit Office with an interpretation of this provision to the effect that the Attorney General should not approve payments from the SIA unless “*sufficient*” funds remain available for Legal Aid purposes.

The Solicitor General's interpretation of "sufficient" is:

sufficient with regard to the size of the pool of funds available for other purposes (under Section 67(2)(b)); and with regard to the existence and number of those other purposes.

However, the Audit Office notes that despite that fact that discretionary payments have been made from the SIA, no supplementation has been made to the Legal Aid Fund, and the balance of the fund as at 30 June 1996 was \$6m.

The Audit Office is aware that in 1995-96 supplementation to Legal Aid (some \$10m) has been made from the STAF and that the Law Society believes the intentions of the Act will be satisfied if Legal Aid funding is maintained at the same level as previous years irrespective of the source of funding.

In response to a draft report, the Director General of the Attorney General's Department also contended that a literal interpretation of the section would create a direct inconsistency, a view with which the Solicitor General agreed. Furthermore, the Director-General was of the view that the intention of Parliament may be satisfied by payment from STAF.

In response to the views expressed by the Law Society and the Director General, The Audit Office contends that:-

- those views would seem to support the argument that STAF is regarded as a surrogate of the SIA, in which case benefits could be derived from combining the two accounts. (This is reflected on further within section 4.6 *The Audit Office Comments*).
- the Solicitor General's opinion was not canvassed on the basis that non-discretionary payments were to be made without any allocation for Legal Aid from the SIA whatsoever. The Audit Office considers that the payment of discretionary expenses from the SIA ahead of supplementation of Legal Aid may constitute a breach of the Act. If necessary, the question should be referred back to the Solicitor General for consideration.

4.3 Compliance of Expenditure with the Act

Sufficiency of Compliance Testing

The Law Society has advised that, as administrator of the SIA, it has no statutory role to check compliance of SIA expenditure.

The Law Society does acknowledge, however, a duty of care in regard to the reimbursement of claims for costs by SIA beneficiaries and therefore undertakes a detailed compliance examination of expenditure on a sample basis.

The Law Society considers that sample testing is sufficient for the following reasons:

- beneficiaries which incur expenditure have primary responsibility to ensure expenses as claimed are in compliance with the Act and
- reliance is based on the integrity of, and internal controls established by beneficiaries, to ensure that costs as claimed are in compliance with the Act
- to do otherwise would increase the costs of administering the SIA.

In addition, the Law Society monitors expenditure by beneficiaries to ensure budgetary limits set for such beneficiaries are not exceeded.

Observations

The Audit Office considers that the above arrangements do not cater for a number of inherent risks. Some of these risks are:

- as the Act is open to interpretation there is a risk that beneficiaries may interpret the Act that can lead to expenditure being claimed which may not fall within the intentions of the Act
- expenditure claims may contain errors that may not be detected by the Law Society given sample testing of claims on the SIA
- given that the Councils, as professional guilds, conduct other core business apart from SIA related functions, it is not possible often to delineate clearly between a guild function, the cost of which is payable by the guild, and a function which is chargeable to the SIA (ie expenditure which is properly chargeable to a guild may in fact be inappropriately charged to the SIA)
- the mixture of roles of the Law Society as an administrator and a beneficiary of the SIA as discussed in section 4.4 *The Role of the Law Society*, may give rise to potential conflict of interest.

Compliance Testing The Audit Office examined a sample of expenditure from the SIA for compliance with the Act.

Observations

- In certain instances the Law Society was not able to provide a sufficient explanation of expenditure reimbursed from the SIA. Accordingly it was necessary for the Audit Office to seek explanations and evidence from each of the relevant claimants before compliance with the Act could be determined.

In a number of instances, The Audit Office was not able to conclude whether certain expenditure complied with the Act.

This is because the provisions in the Act dealing with SIA expenditure are broad and therefore open to interpretation.

As a consequence The Audit Office is not in the position to conclude whether all costs incurred by the LSC and the Councils and reimbursed from the SIA, are in compliance with the Act.

Some of the cases where The Audit Office has not been able to reach a conclusion are detailed below.

The Law Society argues that the expenditure identified in the examples quoted satisfies the broad objectives of the Act (as set in the preliminary division of *Part 10 Complaints and Discipline* at Sections 123-125).

Costs in Exercising Functions Section 67 of the Act provides that the Legal Services Commissioner (LSC) and the Councils can claim costs from the SIA in exercising “functions for the purpose of Part 10”.

Part 10 essentially prescribes the functions of the Councils in handling and investigating complaints. Part 10 also prescribes the functions of the LSC which are to receive and investigate complaints as well as monitor the abovementioned functions of the Councils.

Observations Presumably these functions are prescribed by Part 10 in order that the purposes or objectives of this part of the Act can be met.

On the other hand, The Audit Office has observed the following examples.

Costs of Entertainment	Costs associated with annual luncheons held by the Law Society for voluntary disciplinary committee members (for food, drinks including alcohol) is charged to the SIA.
Observation	<ul style="list-style-type: none">• Staff from the Professional Standards Division of the Law Society lunch with guests at the Law Society's dining room facilities at the expense of the SIA. <p>The LSC claims lunches from the SIA.</p>
Costs of Gifts	<p>The Bar Council has purchased gifts for retiring disciplinary committee members and as a matter of course provides food and beverages after committee hearings at the expense of the SIA.</p> <p>The Councils adopt the view that such expenses are a normal part of business practice and therefore ought to be considered as a cost associated with carrying out a complaints and disciplinary role in compliance with the Act.</p>
Observation	<ul style="list-style-type: none">• The Audit Office considers that the provision of entertainment and gifts is not a function prescribed by the Act for purposes of Part 10. Accordingly a payment from the SIA for this purpose may not be in compliance with Section 67 of the Act.
Costs of Ethics and Practice Standards	<p>The Law Society has claimed expenditure of \$390,000 during the year ended 30 June 1996 from the SIA (pursuant to Part 10) for costs associated with printing and distribution of the New South Wales Solicitors' Manual.</p> <p>The Law Society has advised that:</p> <ul style="list-style-type: none">• the cost for the development of the manual was met by the Law Society• the manual, which is distributed to all solicitors, essentially deals with ethical and practice standards. <p>Other costs incurred by the Law Society's Professional Standards Division, which is interpreted by the Law Society as relating to ethics and practice standards, are also claimed from the SIA pursuant to this section.</p>

Observations

- The functions of the Law Society Council in maintaining ethics and practice standards are not functions prescribed by the Act for purposes of Part 10.

Accordingly there is a question as to whether such costs are an appropriate charge to the SIA as a cost associated with Part 10.

The Law Society has advised that:

- ◇ although there is no specific provision in Part 10 for carrying out ethics and practice functions, those functions fall within the objects of Part 10 which include:

to maintain at a sufficiently high level the ethical and practice standards of the legal profession as a whole

- ◇ even if these costs did not fall under Part 10, the costs could be justified on the grounds of “*the promotion and furtherance of legal education*” under the Section 67(3) of the Act.

It is noted, however, that the contents of the Manual go beyond ethics and practice standards. The Manual serves as an “*important part of the solicitor’s reference library*” and covers other matters in addition to ethics and practice standards.

It could be argued that if the Law Society considered it inappropriate to charge the costs of development of the manual to the SIA, then the costs of printing and distribution are also an inappropriate charge to the SIA.

A former President of the Law Society stated in the Foreword to the Manual that the Manual “is of immense value to the profession.”

The issue to be considered is whether expenditure on the Solicitors’ Manual provides a benefit to the public or a greater benefit to the legal profession in assisting members to operate a legal practice. The Audit Office tends to the view that the latter may be the case.

It is noteworthy that the Bar Association also has a Barristers’ Manual which is similar in content to the Law Society Manual. However, the costs of this manual and other costs associated with ethics and practice standards are not claimed from the SIA.

**Defending a
Legal Action
Against the
Council**

The Bar Council has incurred costs in defending a legal action by a complainant who alleged malice by the Council in the handling of a complaint.

The Bar Council is of the view that the cost of the defence is a consequence of the hearing of a complaint and is therefore claimable under Part 10.

Observation

- Part 10 of the Act does not provide for the Councils or individual Council members to defend an action of malice arising.

Accordingly costs incurred for this purpose from the SIA may not be in compliance with the Act.

**Out of Court
Settlement**

The Bar Council was sued by a complainant whose complaint was dealt with by the Council. The Council defended the action but agreed to pay from the SIA a portion of the complainant's legal costs.

The Bar Council claims that these costs were incurred pursuant to Part 10 because they were matters which arose from disciplinary activities in which the Bar Council is compelled to engage.

Observation

- The current wording of the Act does not provide for, in specific terms, settling the legal costs of complainants other than as ordered by the Legal Services Tribunal. Accordingly, payment from the SIA for this purpose may not be in compliance with the Act.

**Costs Associated
with
Receivership**

The Law Society Council, in the course of investigating a complaint may if it so chooses, arrange for a Receiver to be appointed over a solicitor's practice to protect the assets of clients.

The Law Society Council in so doing, incurs costs which are charged to the SIA.

The Audit Office notes that in one case, a solicitor disputed a Mareva Injunction which is essentially a freeze on a solicitor's assets sometimes imposed on a solicitor by the Court at the Law Society's request (often at the same time that a Receiver is appointed). Legal costs incurred by the Law Society in defending the Mareva Injunction were charged to the SIA.

The Law Society believes that Receivership in particular cases is a logical extension of the complaint investigation process (pursuant to a Part 10 of the Act) and the costs incurred by the Law Society in appointing a receiver are an appropriate charge to the SIA.

Observations

- It would appear that the functions of the Law Society in regard to receivership and protection of client assets (including Mareva Injunctions) as a result of defalcation by solicitors, are not functions prescribed by the Act for the purposes of Part 10. The Receiver's primary duty is to protect the assets of clients rather than handling complaints and discipline matters.

In fact section 110 provides for the fees of the Receiver to be paid from the Fidelity Fund. It could be argued that the costs associated with the appointment of the Receiver, consistent with the costs of ongoing fees, are an appropriate charge to the Fidelity Fund.

Accordingly, costs incurred from the SIA for the above purposes may not be in compliance with the Act.

Sharing of Costs

The Councils carry out both SIA and non-SIA related functions within their respective premises often using identical resources such as staff, office equipment and computer equipment. Examples of costs apportioned by the Councils include:

- salaries
- rent
- computer system costs
- office administration costs
- finance administration costs (applicable to the Law Society only)
- postage
- miscellaneous costs (applicable to the Law Society only).

The Councils have advised that expenditure between the SIA and non-SIA related expenditure is apportioned on a reasonableness basis.

Observations

- The apportionment of costs incurred by the Councils, in certain cases, for example salaries, was not supported by substantive evidence capable of verification. The Audit Office therefore was not able to conclude that certain costs were apportioned to the SIA in a fair and equitable manner.

4.4 The Role of the Law Society

The role of the Law Society Council as described in 4.1 *Budgeting and Expenditure Procedures* creates a potential for a conflict of interest. The reasons for this are discussed below.

Budgetary Role

In the budget setting process described earlier, the Law Society's role enables it to exercise an influence over funding allocations from the SIA to beneficiaries. This has the following effects:

- the Law Society Council's role in allocating funding to the LSC and the Bar Council, with which it competes for limited SIA funds, can be perceived to create, at least the appearance of, a conflict of interest.

In the course of the audit the LSC has advised that;

recently the Law Society has expressed concern and hesitation to fund any submissions which call for an increase in staff which appear to be based on a concern about the growth of this office and potential duplication of or overtaking of Law Society functions.

This has been most notable recently in the Law Society's concern addressed over a proposed move to Goodsell Building where they refused to accept our initial submission [by the LSC] for the move based on the contention that we were seeking too much space.

- the Law Society Council reviews and approves its own funding submissions for SIA allocations
- in approving budget allocations for non-discretionary expenditure the role of the Law Society Council may not be consistent with the Act in that the Act provides that the Law Society is "to pay" from the SIA costs as "incurred" by beneficiaries. In this regard the Law Society Council is, in effect, exercising a discretion over non-discretionary expenditure.

Approval Role over SIA Expenditure The role of the Law Society in reimbursing expenditure from the SIA also creates the potential for conflict of interest because of the following:

- the Law Society is governed by the Law Society Council
- the Law Society approves the reimbursement of expenditure of the Law Society Council from the SIA
- the Law Society approves the reimbursement of expenditure of other beneficiaries of the SIA with which the Law Society Council competes for funding, eg Bar Council.

Potential Conflict of Interest There also seems to be a potential conflict of interest between the Law Society's role as a professional guild and as the administrator of the SIA.

This is reflected on further below, at section 4.6 *The Audit Office Comments*.

4.5 Benefit to the Profession

Whilst many of the provisions in the Act in regard to expenditure from the SIA benefit legal clients, there is an observation that, in many respects, the provisions of the Act also benefit the profession.

The issue arises as to whether the profession should take more responsibility for the costs of those activities from which it benefits and which are funded currently from the SIA from interest on clients' monies.

It could be argued that by not doing so could contradict the generally accepted principle (at least in so far as solicitors are concerned) that legal practitioners should not derive the benefit of interest from client trust monies. The following should illustrate the point.

**Complaint and
Disciplinary
Functions**

The SIA funds the legal profession's complaints handling and disciplinary roles.

The Memorandum of Association of the Law Society include as objectives :

- to suppress dishonourable conduct or practice
- to preserve integrity and status.

The Law Society has stated:

..that the dual objectives of a complaints and discipline system applicable to lawyers are the protection of the interests of the consumers of legal services and the protection of the legal profession's own well being by maintaining proper standards and expelling persons unfit to remain in practice.

The President of the Law Society has stated that:

..active involvement in setting professional standards and the testing of solicitors against those standards is a hallmark of the profession.

Observations

- The above comments demonstrate the importance of the complaint handling and disciplinary roles to the profession.

Given this importance, the question arises as to whether the costs of that role should be met by the profession rather than from interest on client money as is the case at present.

It is the understanding of The Audit Office, that the internal complaints and disciplinary functions of other professional associations are met by members with no direct financial assistance from clients' monies.

Funding of the LSC

The Office of the LSC is funded from the SIA.

The main role of the Legal Services Commissioner (LSC) is to receive complaints against lawyers and to monitor the handling of complaints and disciplinary functions of the Councils.

The LSC was established by an Act of Parliament following recommendations by the Law Reform Commission which conducted an inquiry into the Act in 1992. The Commission's report titled *Scrutiny of the Legal Profession Complaints Against Lawyers* was published in February 1993.

The Act did not adopt the Law Reform Commission's recommendation which sought;

funding of reforms, especially the establishment of the Legal Services Ombudsman (the LSC) through a modest levy or surcharge on lawyers practicing certificates which will permit the release of existing sources of funding for the purposes of legal aid.

Instead the Act provides for the LSC to be funded from the SIA.

The LSC advised that:

In several overseas jurisdictions the regulatory function within the legal profession is funded by the profession, while in others it is funded by a combination of client money, Government money, and the profession.

Observations

- Given that the LSC oversees the professions' complaints and disciplinary roles which serve the interests of the profession as well as the clients, there is a persuasive argument that the LSC should be funded, at least in part, by a levy on the profession.

In terms of funding the LSC this report makes a recommendation in regard to the role of the Law Society as administrator of the SIA from which the LSC is funded currently.

Promotion of Legal Education The Act provides for the SIA to fund the promotion and furtherance of legal education.

Observations • The Act is not clear as to whom legal education is meant to target, that is, should education be directed towards public education programs or aimed at training current or future practitioners?

The Law Society interprets this provision to include financial supplementation of the College of Law Pty Ltd which is a fully owned subsidiary of the Law Society.

The College of Law trains persons with legal degrees to become practicing solicitors and also provides ongoing legal training for legal practitioners.

In supplementing the College, income from client monies is effectively used to subsidise tuition fees for those legal practitioners and students attending the College.

The Audit Office noted one example where \$650,000 was paid to the College from the STAF account in order to contain student fees.

Supplementation of the Solicitors' Fidelity Fund The Solicitors' Fidelity Fund exists to compensate clients whose monies have been misappropriated by solicitors.

The Fund was established by the Act in 1935 and was financed originally and solely by solicitors. Ownership and administration of the fund vests with the Law Society pursuant to the Act.

Establishment of the Fund enabled the Law Society to demonstrate to the public that it was taking responsibility for the actions of its members and for protecting the public against financial loss. In this sense the Fund acts as a marketing tool for the profession.

Observations

- The Act provides for the Solicitor's Fidelity Fund to be supplemented from the SIA. As a consequence, it can be argued that solicitors no longer take full responsibility for financing and administering the Fund. Yet the Fund continues to serve the profession as a valuable marketing tool.

For the year ended June 1996, the Fund received \$5.4m from income derived from clients' monies (STAF) and \$5.5m from solicitors' contributions. Expenses of \$2.4m incurred by the Law Society in administering the Fund were reimbursed from the Fund.

The quantum of reserves accumulated in the Solicitor's Fidelity Fund also determine whether solicitors will be levied (pursuant to the Act) to contribute to the fund in the event of substantial claim(s) on the Fund leading to a shortfall of funds. In this sense it is in the interest of the profession that the Solicitor's Fidelity Fund be maintained with as high a level of funds as possible.

Given the benefits provided to the profession and the original intentions of the Fund the question arises as to whether the profession should resume sole financial responsibility for the Fund.

The Parliamentary Committee of Public Accounts in Queensland recommended reforms to the Solicitor's Fidelity Fund in that State to the effect that the fund continue to be administered by the Queensland Law Society but that the fund should not benefit from contributions from monies earned from solicitors' trust accounts.

Observations
(continued)

It appears that fidelity arrangements in Britain, Canada, New Zealand and America are funded entirely from contributions by legal practitioners.

The Law Society of New South Wales concurs that it is the responsibility of the legal profession to protect clients from dishonest members of the profession and has advised that it aims to again have the Fund fully financed by members' contributions.

The Law Society advised that this will occur only when the Fund has accumulated sufficient reserves (with the assistance of contributions from monies earned on client trust monies) thereby reducing the risk of a shortfall in the Fund which could result in solicitors being levied to finance the shortfall.

In the meantime the Law Society will continue to seek contributions from the SIA.

If the Law Society is of the view that the profession has a responsibility to protect clients against dishonest practitioners, this does raise the question as to why the profession is not taking financial responsibility for the fund.

As long as the Fidelity Fund contains income earned on client trust monies then it is difficult for the Law Society to claim that it is taking full responsibility for protecting its clients from dishonest solicitors.

4.6 The Audit Office Comments

Based on all the observations outlined above, The Audit Office considers there is a need to implement more transparent procedures to ensure compliance of expenditure from the SIA with the Act.

There is a need to ensure that the Law Society be in the position to account more clearly for the expenditure out of the SIA.

The Audit Office notes that to a large extent the STAF is used to supplement payments from the SIA. Under the circumstances, it would seem reasonable if the management of the funds were to be combined under the same statutory requirements. A similar recommendation was made by the Parliamentary Committee of Public Accounts in Queensland (the Committee).

The Audit Office considers that such an arrangement would not only simplify and clarify the accounting and accountability arrangements but, would also address the concern that the Law Society is collecting interest on clients' monies which might rightfully belong to the clients. After all, technology is at a stage where the calculation of interest earned on clients' money is easier than it may have been in the past. Thereby the return of interest to clients is more feasible.

The Committee, in its 1991 report noted that it was not possible to distinguish between the Law Society's dual role in that State as a labour guild for lawyers and that of the statutory administrator of income earned on clients' monies. The Committee concluded that the two roles were "fundamentally

The Committee stated in its report that:

...the fact that the Law Society is charged with two roles which the Committee believes are fundamentally incompatible, ie. representing the legal profession on one hand, and managing funds on behalf of government on the other. ...these two roles must be separated.

...The independence and the integrity of both the Law Society and the legal profession cannot be maintained while the Society continue this role [as a statutory administrator].

...It is in the best interest of the status and integrity of the Law Society that the Society no longer administer the monies earned from the funds held in solicitor's trust accounts and recommend accordingly...

The Audit Office concurs with the views expressed above and would support a similar recommendation in NSW.

5. The Liability of the SIA

Overview

The Audit Office is not in the position to comment authoritatively on the future liability of the SIA.

It is noteworthy, however, that the Law Society estimates that without the supplementation from the STAF there would be a shortfall of about \$20m for the financial years 1996-97 to 1998-99 inclusive.

This would seem to reinforce the recommendation that the administration of these accounts should be combined under one separate statutory requirement.

5.1 Introduction

Section 67 of the Act requires the Auditor General to undertake a special audit of the present and future liability of the SIA for the expenditure of the LSC and the Councils.

For the purposes of section 67 of the Act the liability of the SIA is taken to mean future commitments of expenditure.

The Act does not define the term “*present and future liability*”. The Audit Office has attributed the term “*present*” to mean 1996-97.

The Audit Office is not in a position to comment authoritatively on future liabilities. Liabilities depend on both income and expenditure in the future. This is compounded by the fact that under the Act there seems to be no limit over the level of non-discretionary expenditure certain beneficiaries may claim from the SIA.

Nevertheless, The Audit Office had requested the LSC and the Councils to estimate expenditure over the next three years which is likely to be claimed from the SIA.

The Law Society was requested also to forecast income to the SIA over this period and was requested to estimate the likely expenditure of all SIA beneficiaries on both discretionary and non-discretionary purposes.

In respect to the future liability of the SIA, and due to the limitations on the reliability of estimates, projections did not go beyond a three year time frame. Therefore, and for the purposes of this report, “future” covers the period 1997-99.

The Audit Office has also reviewed the liability of the SIA for all purposes over a three year period.

Other issues such as the statutory funding arrangements necessary to meet the above mentioned liabilities, the current practices for funding SIA beneficiaries and the risks to funding are also the subject of comment.

5.2 The Liability of the SIA

Estimates of expenditure included within this section of the report have been prepared by the LSC and the Councils.

The projected expenses/liability of the SIA in respect to the above organisations is set out in the following tables.

Table 5.1: Present Liability	
Purposes	1996-97
	\$000
LSC	1,595
Bar Council	938
The Law Society Council	3,082
Total	5,615

The projections essentially reflect costs to be incurred by:

- the LSC in carrying out the Commissioner's statutory responsibilities pursuant to section 131 of the Act and
- non-discretionary costs incurred by the Councils in providing complaint related functions pursuant to Part 10 of the Act.

The main difficulty in the preparation of estimates is that the number and complexity of complaints cannot be predicted and these factors impact significantly on expenditure incurred by those organisations. Projections therefore must be considered as indicative only.

Table 5.2: Future Liability		
Purposes	1997-98	1998-99
	\$000	\$000
LSC	1,572	1,681
Bar Council	978	1,051
The Law Society Council	3,242	3,382
Total	5,792	6,114

5.3 Total Projected Expenditure

Discretionary and Non-Discretionary Costs

The Law Society has prepared a forecast of all future discretionary and non-discretionary expenditure for SIA purposes.

It has also prepared forecasts of future income to the SIA.

These estimates follow.

Purposes	1996-97	1997-98	1998-99
	\$000	\$000	\$000
SIA Income	8,948	8,783	8,577
SIA Related Expenditure	(28,974)	(29,139)	(29,527)
Shortfall	(20,026)	(20,356)	(20,950)

The above analysis indicates that the SIA is not able to meet expenditure for all SIA purposes.

The Law Society has advised that without supplementary funding from the STAF, expenditure on Legal Aid, Legal Education, the Law Foundation and the Fidelity Fund would not occur due to insufficient income to the SIA.

In the past the STAF has funded this type of expenditure and the Law Society expects that the STAF will continue this practice for the foreseeable future.

The Audit Office has no reason to dispute the estimates put forward by the Law Society. In addition it also noted that the basis for the collection of ‘interest’ by SIA and the STAF is declining.

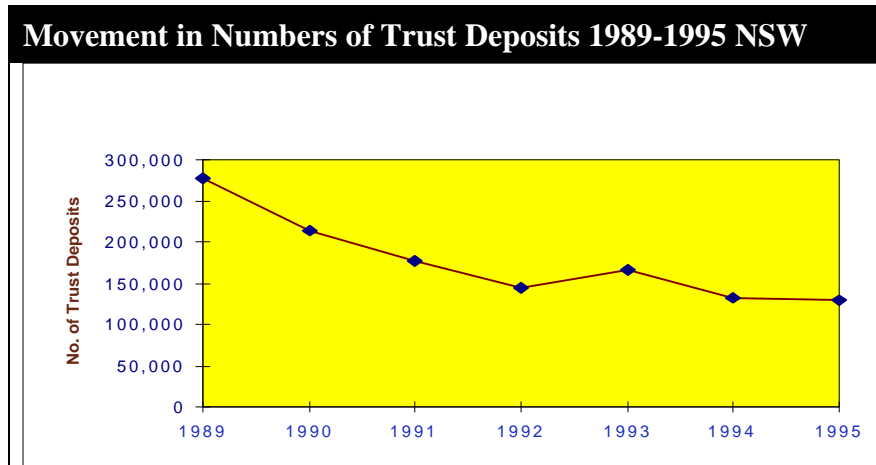
5.4 Declining Income Base

The SIA and the STAF rely on income earned from non-interest bearing client trust accounts.

There is no certainty that funding from these sources will continue at the same levels as previously.

As clients become more aware of, and chose, their option to earn interest on trust monies, it is likely that income from this source will decline. Furthermore computer technology continues to advance that will make it increasingly easier to calculate interest even on small and/or short term deposits by clients.

Research conducted by Adrian Evans, Senior Lecturer Monash University does indicate a declining trend in the use of trust accounts as illustrated in the following graph. This could result in progressively less trust deposits earning progressively less interest.



Source: Adrian Evans Monash University

Having regard to all the above, there would seem be strong and persuasive arguments for combining the two accounts under one statutory requirement.

Apart from the benefits outlined earlier, ie better accountability, and the elimination of, or the appearance of, a conflict of interest between the Law Society' role as a guild and that of administrator of clients' monies, it would also be beneficial to the extent that:

- the funding base for expenditure defined in the Act would be clarified
- current income collection arrangements would be simplified because statutory deposit accounts would not be necessary, given that interest would be derived directly from solicitors' trust accounts. This would improve efficiency and effectiveness of income collection.

In addition, it would be prudent for the Government to consider finding alternative sources of income in the interest of maintaining the long term viability of the SIA.

5.5 Other Issues

The Audit Office also noted the following issues that are worthy of comment.

The Fidelity Fund

- Pursuant to Section 73(2) of the Act, if there is insufficient money in the Fidelity Fund to meet claims on that fund, the Law Society, with the approval of the Attorney General, may borrow money to meet those claims. In so borrowing the Law Society may create a charge over money in the SIA.

In a worse case scenario, and should the Law Society breach the terms of a borrowing, the lender is entitled to call on SIA monies and future SIA income to meet the loan.

The likelihood of this happening is not known but it is noted that the comparable Fidelity Fund of Victoria suffered recently a \$36m shortfall. The Law Society Council in New South Wales is also investigating currently a legal practice concerning the management of approximately \$46m in client monies.

- Section 73(2) of the Act appears to give the Fidelity Fund a priority over other SIA purposes. It is noted, however, that this seems to contrast with Section 67 of the Act whereby non-discretionary expenditure and Legal Aid appear to be given priority to SIA funding over the Fidelity Fund.

It is noted also that while the SIA is used as a form of security over the liabilities of the Fidelity Fund, the Act does provide for Law Society to impose a special levy on solicitors where the fund is unlikely to meet its liabilities.

- Because the Fidelity Fund is a beneficiary of the STAF, the STAF, like the SIA, may be called upon to fund the Fidelity Fund in the event of a shortfall in that fund.

If this is the case, the continuing ability of the STAF to fund other SIA activities/purposes is at risk.

6. Performance Issues

Overview

Management information by which the performance of complaint handling might be judged and reported tends to be activity related rather than performance driven.

Consequently, The Audit Office is not able to form an opinion as to the economy, efficiency and effectiveness of the Office of the Legal Services Commissioner, the Law Society Council and the Bar Council in regard to complaint handling.

The LSC has developed certain performance indicators in regard to the management of complaints which will be included in its Annual Report for 1996-97.

6.1 Introduction

Costs incurred by the Law Society Council and the Bar Council in exercising functions under Part 10 Complaints and Discipline of the Act, are paid from the SIA as are costs incurred by the Legal Services Commissioner (LSC) in meeting his statutory obligations.

The Audit Office has conducted an audit of the activities of the Law Society Council, the Bar Council and the LSC which are paid from the SIA.

More specifically the audit reviewed the economy, efficiency and effectiveness of expenditure incurred on complaints handling by the Councils and the role of the LSC in monitoring the complaints system within New South Wales.

The majority of complaints in regard to conduct by solicitors are investigated by the Professional Standards Division of the Law Society. The Division has 32 staff including 16 solicitor investigators.

Similarly, conduct complaints in regard to barristers are referred to The Bar Association's Professional Affairs Department. The Department receives considerable assistance in its review of complaints by voluntary work by barristers and others.

In the case of the Law Society and the Bar Association complaints are adjudicated by conduct committees.

Statistics on complaints for the year ended 30 June 1996 are included within *Appendix 3 Complaint Statistics*.

6.2 Complaint Handling Criteria

A complaint system should provide the following features:

- a clear definition of what constitutes a complaint
- the system should be accessible to complainants
- the process should be user friendly
- staff should be adequately trained in complaint handling
- there should be a means of recording complaints and monitoring complaint management
- the complaint handling system must be independent, open and accountable and subject to external scrutiny
- performance standards for complaint handling should be developed, implemented and reported
- responsibility should be adequately defined
- the complaints handling system must feed back to the legal profession to contribute to the enhancement of standards and ethics.

6.3 Complaint Handling Procedures

Complaint Handling Procedures		
LSC Receives Complaint	⇒	<p>Acknowledgment Letter Sent to complainant</p>
LSC Assesses Complaint	⇒	<p>May Request more information</p> <p>May attempt mediation</p> <p>May advise complainant of other avenues</p> <p>May dismiss complaint</p>
Decision to Investigate Complaint by LSC	⇒	<p>Complaint Referred to Councils to Investigate</p> <p>Complainant informed of who is handling complaint</p>
Outcomes	⇒	<p>Disciplinary action taken by LSC, Councils or Legal Services Tribunal</p> <p>Case dismissed</p> <p>Complainant may request LSC to review conduct of the investigation, decision and outcome</p> <p>LSC may re-investigate complaint referred to the Councils</p> <p>Complainant notified</p>

Criteria 1

There should be a Clear Definition of what Constitutes a Complaint

The definition of a complaint within an organisation's policy for dealing with complaints should identify:

- *intended outcomes such as improving client service by identifying client dissatisfaction.*
- *whether the organisation wishes to examine only serious grievances in which case a narrow definition would be used while a broader definition would apply where the organisation seeks to assess client satisfaction and make overall improvements.*

The Legal Profession Act defines a complaint in general terms. Section 127 of the Act provides a broad definition of both “*professional misconduct*” and “*unsatisfactory professional misconduct*”.

Observations

- The conduct committees of the Law Society Council and Bar Council will dismiss a complaint if there is no reasonable likelihood that a barrister/solicitor will be found guilty by the Legal Services Tribunal of either “*professional misconduct*” or “*unsatisfactory professional conduct*”.

Complaint statistics for 1995-96 indicate the following:

- ◇ 2,388 complaints were received by the LSC concerning solicitors and 154 concerning barristers
- ◇ of 1760 complaints investigated by the Law Society Council; 1102 or 62.6%, were dismissed
- ◇ of 122 complaints closed by the Bar Council 50, or 40.9%, were dismissed.

The complaints dismissed were considered by the conduct committees as not meeting the relevant definitions for “*professional misconduct*” or “*unsatisfactory professional*”.

Criteria 2

The Complaints System should be Accessible.

This involves effective access to information, assistance, officials and institutions relevant to the process, with minimal disincentives imposed by time, cost or complexity.

A function of the LSC pursuant to Section 131 of the Act is:

to conduct surveys of, and report on, the views and levels of satisfaction of complainants and respondent legal practitioners with the complaints handling and disciplinary system

Observations

- The LSC has not conducted surveys in compliance with the above mentioned section of the Act.
- The number of complaints received, 2,544, and the number of telephone enquiries received, 8,758, by the LSC, would tend to indicate a level of awareness and accessibility within the community to the complaint handling system.
- It is considered that on acceptance of instructions by a legal practitioner, a client should be provided with information concerning his/her rights under the complaint system operating in New South Wales.

Criteria 3

The Process should be User Friendly

The process for handling a complaint should be clear to both complainant and complaint handlers and be uncomplicated.

A complainant who would seek to lodge a complaint with the Law Society Council / Bar Council would be advised to lodge the complaint with the LSC.

The LSC, upon receipt of the complaint, may advise the complainant that the complaint will be forwarded to the Law Society Council / Bar Association for investigation.

Observation

- The above arrangements are likely to confuse complainants and need therefore to be explained in an adequate way by the LSC and the Councils.

Criteria 4

Staff Empowerment

Complaints staff of investigating bodies should have the necessary skills and training in complaint handling.

Observations

- While a skills audit was not undertaken by The Audit Office there is a concern that staff of the LSC do not have the necessary skills to undertake investigations of complaints.

The LSC has advised that:

- ◇ staff training is now undertaken on a range of issues relevant to complaint handling such as negotiation skills, legal knowledge, investigation techniques.
- ◇ it is extremely difficult to attract highly competent lawyers with long practical experience in the private profession due to resources, position and grading constraints.
- ◇ the LSC has one only investigation position and that position has been filled by a legally trained person. However, this person is not experienced as Law Society investigators largely due to the pay differential between the offices.

Criteria 5

A Means Of Recording

There is a need to record pertinent information in regard to the complaints if an organisation is to use the information to identify defects in service.

Complaint handling systems are maintained by the LSC, the Bar Council and the Law Society Council.

Each of the above uses a computer data base for recording complaint details.

Complaints are recorded initially on a complaint form. The form provides for various boxes to be ticked to indicate the basis of the complaint.

Observations

- The LSC has direct access by computer to segments only of the complaint and professional standards databases of the Law Society and Bar Councils.

The records (of the number of complaints by type) of the Bar Council or the Law Society Council do not reconcile with the records of the LSC.

- A uniform categorisation of complaints should be negotiated between the three organisations in order to improve administration and monitoring by the LSC.
- The complaint form provides limited space to detail the complaint. The lack of information provided initially can require the LSC and Councils to seek further details from the complainant. The LSC has advised that the complaint form has been redesigned and more space has been provided for complaint details.

Criteria 6

Management of Complaint Handling

The complaints system should be efficient and effective and meet the needs of the complainants, lawyers and society. This will involve

- *the prompt and thorough investigation of disciplinary matters*
- *consensual dispute resolution of appropriate complaints*
 - *a flexible range of sanctions and remedies*
- *the availability of education, counselling and assistance for lawyers to prevent or minimise poor practice*
- *complaint progress should be monitored as should the qualitative aspects of the complaint handling process*
- *complainants should be kept informed on a regular basis as to the progress with a complaint.*

Responsibility should be allocated for managing the complaints system. The responsible person should:

- *ensure the efficiency and effectiveness of the system*
- *provide timely management reports that analyse data from complaints log.*

Observations

- The LSC does not track each case on an individual basis once those complaints have been allocated to the Councils but does do so on a needs basis as determined by the LSC.

Management information in regard to complaint handling of the type identified below is maintained to varying degrees by the investigating bodies.

- ◇ the average cost of investigating a complaint
- ◇ the costs expended in the investigation of individual complaints
- ◇ the average time frame for investigating a complaint/review
- ◇ the time taken to acknowledge complaints
- ◇ changes made to legal practices as a result of complaints
- ◇ ratios of staff handling complaints to complaints received
- ◇ benchmarking against other complaint handling bodies.

In the absence of this information it is not possible to comment upon the efficiency, economy or effectiveness of the LSC, the Law Society Council and the Bar Council.

- It is considered that appropriate complaint (and where appropriate, common) handling criteria be developed by all of the investigating organisations, and performance against criteria be measured and reported within the Annual Reports of those organisations.

**The Law Society
Councils
Complaint and
Disciplinary
Role**

Complaints and Disciplinary functions as set out in the Act.

At the same time the Law Society owns a company named Law Cover Pty. Ltd. (Law Cover) which administers an Indemnity Fund for practitioners. As a result of proven or admitted negligence Law Cover paid \$9m in claims during 1994/95.

Observations

The effectiveness of the Law Society Council's Professional Standards Division (PSD) may be impaired in light of the following:

- It is likely that a case of misconduct defended by Law Cover would warrant review, and possibly investigation, by the PSD of the Law Society.

Because Law Cover maintains a policy of not disclosing information concerning the conduct of a legal practitioner, the PSD is not advised of the matter and is not therefore in a position to investigate should the circumstances warrant. This is all the more pertinent where misconduct resulting in negligence has been proven or admitted by the practitioner.

- A similar situation arises where a client complains to the PSD and sues a practitioner for damages, which action would be defended by Law Cover.

The client may not have access to the deliberations/findings of the PSD to support the client's case in proceedings defended by Law Cover.

On the other hand the Law Society, through its wholly owned company Law Cover, has a role to defend solicitors whose negligent action may constitute misconduct.

Observations
(continued)

In the absence of a free flow of information between the two organisations, the capacity and or commitment of the Law Society towards disciplining its members and improving practice standards is in doubt.

These circumstances may give rise also to a potential conflict of interest by the Law Society.

Criteria 7
<p>Performance Standards</p> <p><i>There should be reporting of performance standards within the Annual Report of the responsible agency.</i></p>

Annual Reporting

The Bar Council and the Law Society Council report within their Annual Report complaint statistics and discipline matters such as:

- number of complaints received and dealt with
- categories of complaints
- the overall status of complaints.

During 1995-96 the LSC developed a range of performance indicators over complaint handling. Reporting against these indicators is planned for 1996-97.

Observation

- The nature of the statistics reported tends to be activity related rather than performance driven.

It would be beneficial if the three investigating organisations are able to develop and implement common performance indicators.

Criteria 8

Feedback

The complaints handling system should be a source of input to the legal profession so as to enhance professional standards in the areas of legal education, legal practice, ethics and professional responsibility.

Under S131 of the Legal Profession Act 1987 the LSC has the function to:

(1) to assist the Councils to promote community education about the regulation and discipline of the legal profession

Observations

- The majority of complaints concern costs. Other complaints concern ethical matters, negligence, and quality of service
- There is no identifiable mechanism in place however to educate the legal profession or the public about issues that emerge from complaints.
- While the LSC employs an education officer, the majority of that person's time and effort is spent on complaint handling.
- Nor is there a mechanism to educate the public of the system of co-regulation.

Such a mechanism may help to reduce any concerns within the community in regard to impartiality and independence of the complaint handling process.

- There are also considerable enquiries of the Law Society Council in regard to matters of ethics by legal practitioners. The bases of complaints and enquiries would serve as useful input to educational programs on complaint handling.

Criteria 9

External Scrutiny and Review

The system should be independent, open and accountable and subject to external scrutiny

The Office of the Legal Services Commissioner (OLSC) was established on 1 July 1994 as a statutory authority independent from the profession.

The main functions of the LSC are detailed within Appendix 2 to this report.

In particular section 131 of the Legal Profession Act 1987 requires the Commissioner to undertake reviews of the decisions of the Law Society Council and the Bar Council. These reviews may be initiated by the Commissioner or by a complainant.

The vast majority of complaints concerning solicitors are handled by the Professional Standards Division of the Law Society Council. The division has a staff of 32 including 16 solicitor investigators.

The strategy of the LSC in dealing with both complaints and potential complainants is to provide advice and generally facilitate settlement of disputes leading to a reduction in the number of written complaints. The LSC sees community education as an important longer term strategy to reduce the level of complaints.

The LSC has provided the following statistics to The Audit Office. Other statistics are provided within *Appendix 3 Complaint Statistics*.

- complaints received, 2,544
- telephone enquiries received, 8,758
- telephone inquiries resolved, 600
- written complaints resolved, 613
- face to face interviews, 348
- 314 Law Society Council files and 28 Bar Council files were reviewed between 1 July 1994 and 31 July 1996
- investigations complete, 10.

Observations

- The Parliament has provided for the appointment of an independent officer to:
 - ◊ investigate a complaint against a legal practitioner by a member of the public
 - ◊ monitor investigations by the Councils and review decisions of the Councils.

In this sense the independence of the process is well served.

- As noted under section 4.4 *The Role of the Law Society*, the Law Society Council, by approving in consultation with the Attorney General, budgets of proposed expenditure by the LSC, can limit the level of funding for the LSC which, in turn, may inhibit the capacity of the LSC to fulfil the statutory role established by Parliament in regard to complaint handling.

In this sense the independence of the LSC is compromised.

- The draft Annual Report of the LSC for 1995-96 contains comprehensive statistics on the status of complaints received. It is not possible, however, to form a view as to how well complaints are being managed.

The Office of the Legal Services Commissioner has nonetheless developed performance indicators and The Audit Office has been advised measurement of performance will be reported in 1996-97.

Also the LSC has sought funding for the implementation of a complaints management system.

- Historically the LSC has not undertaken random reviews of complaint investigations conducted by the Councils.

For example, no self initiated reviews were undertaken between 1994-96 with four reviews initiated in 1997. The LSC has advised that resources are a limiting factor in this regard.

- In practice the LSC does not monitor cases progressing through the Law Society Council and the Bar Council prior to finalisation. The LSC has advised that staff resources are a limiting factor in this regard.

Observations
(continued)

- Where complainants make application under section 158 of the Act, the LSC has undertaken the following reviews:
1994 : 45; 1995 : 81; 1996 : 419; 1997:34.

In the review process, the LSC:

- ◇ upheld 86.9% of the Law Society's decisions and has directed the Law Society Council to re-investigate four matters from 676 files reviewed
- ◇ upheld 82.% of the Bar Council's decisions and has directed the Council to re-investigate one matter from 61 files reviewed.

In the Annual Report of the OLSC for 1995-96, the Commissioner observed that the results of the reviews by the Councils are encouraging and indicate:

that the professional bodies are conducting their reviews well and that the Councils are deciding correctly which complaints should be referred to the Tribunal.

- It is noted that applications for reviews of decisions are free to complainants.

7. Accountability

Overview *The audit has also identified certain other issues that warrant comment.*

7.1 Accountability to Parliament

Annual Reporting In accordance with section 57 of the Act the Law Society Council and the Bar Council prepare and forward to the Attorney General an Annual Report on work and activities under the Act for the preceding twelve months.

The Attorney General is to present that report to both houses of Parliament as soon as practical after receiving the report.

The Annual Report of the Law Society includes privately audited financial statements of the SIA and other audited financial statements.

Observations • While the Law Society presents audited financial statements of the SIA to Parliament through the Attorney General there is no statutory obligation to do so.

It is considered that the responsibility to account should be confirmed by statute.

The Wider Statutory Role of the Law Society Much of the Law Society's powers, functions and duties are defined by an Act of Parliament.

The Law Society is charged by the Government in terms of the Legal Profession Act 1987 to exercise a significant role in the protection of the public of the State.

The Law Society, to a large measure, is a licensing authority, responsible for the good order and regulation of solicitors within New South Wales.

Some of these obligations and duties are financed from funds collected by the Law Society under an Act of Parliament, such as that from the SIA, the Fidelity Fund and practitioners fees.

Observations

- It could be argued therefore that the Law Society is in effect a defacto statutory body and therefore should be directly accountable to Parliament as to the execution of its statutory powers and obligations.

It is noted that in 1989, the Queensland Solicitor- General determined that the Queensland Law Society was, in fact, a statutory body within the meaning of the Financial Administration and Audit Act 1977.

As a result the Queensland Auditor-General became the auditor of the Law Society in that State. Prior to this, the Auditor-General audited only the Fidelity Fund and the General Trust Accounts' Contribution Fund (that is Queensland's equivalent to the STAF). The Law Society of Victoria is audited also by the Auditor-General.

- A review of the Annual Report of the Law Society for 1995-96 indicates much of the report is comprised of the presentation of financial statements.

There is little information on overall performance in terms of the Law Society's other responsibilities under the Act. There is, for example, no information on complaints management and the outcomes achieved.

Appendices

Appendix 1 Payments from the SIA

The following is a list of the types of payments paid from the SIA in accordance with relevant sections of the Act.

- 67(3)(b1-b4): Payment of Cost Assessors Rules Committee, Legal Profession Advisory Council, investigation costs and managership of solicitors' practices.
- 67(3)(c): Payment to the Legal Services Commissioner (LSC) and to the Legal Services Tribunal (Tribunal) for cost in administering Part 10 of the Act. This part basically covers the area of dealing with complaints and disciplinary action as discussed above.
- 67(3)(c1): Payment to the Tribunal for cost in administering Part 6 of the Conveyancers Licensing Act.
- 67(3)(c2): Payment to the Councils or the Legal Services Commissioner for cost incurred in connection with mediation roles in respect to disputes between solicitors and their clients.
- 67(3)(d) and 67(3)(e): Payments to the Bar Council and Law Society Council respectively for cost incurred in dealing with complaints and in taking a disciplinary role (Part 10) and in dealing with matters concerning unqualified practitioners (Part 3A)
- 67(3)(e1): The payment of cost to a legal practitioner in accordance with an order of the Tribunal were the Tribunal is satisfied that the practitioner is not guilty of misconduct.
- 67(3)(e3): The cost incurred by the Conveyancers Licensing Committee in performing its functions under Conveyancers Licensing Act.
- 67(3)(h): Payment to the Law Society for cost incurred in administering the SIA and the Fidelity Fund account.

- 67(3)(I): Where a person is refused admission as a legal practitioner by the Admission Board, he or she may appeal to the Supreme Court against the refusal. The Councils are entitled to be heard by the Supreme Court under the appeal and related Council costs are payable from the SIA pursuant to this Section. The Councils are also entitled to be heard before the Administration Board concerning matters of admission. Likewise, related Council costs are also payable from the SIA.
- 67(3)(j): Payment to the Councils for cost incurred in preventing practitioners from practicing without a current practicing certificate.
- 67(3)(k): The Tribunal or Court may appoint cost assessors for the assessment of costs in legal bills where such bills are disputed. Cost relating to the remuneration of cost assessors are payable out of the SIA pursuant to this Section.
- 67(4) Payment to the Law Foundation based on a prescribed proportion of interest earned on SIA investments.
- 67(3)(a) Supplementation of the Legal Aid Fund.
- 67(3)(b) Supplementation of the Fidelity Fund.
- 67(3)(f) Payment in respect to legal education in NSW. The Law Society normally makes payments to the College of Law pursuant to this section.
- 67(3)(g) Payments to the Law Foundation for cost incurred in meeting its objectives. This is in addition to Section 67(4) payment as mentioned above which is paid from the SIA.

Appendix 2 The Office of the Legal Services Commissioner

The main functions of the Legal Services Commissions are to:

- receive complaints about professional misconduct or unsatisfactory professional misconduct of legal practitioners
- assist and advise complainants and potential complainants in making or pursuing complaints
- initiate a complaint against a legal practitioner
- investigate a complaint or take over the investigation of a complaint if the Commissioner considers it appropriate
- refer complaints to the appropriate Council for investigation or mediation in appropriate cases
- monitor investigations
- review the decisions of Councils
- assist the Councils to promote community education in regard to the legal profession
- assist the Councils in the enhancement of professional ethics and standards
- conduct surveys on the complaint handling and disciplinary system.

The Vision Of The LSC

“We want to lead in the development of an ethical legal services market which is fairer, more accessible and responsive.”

The Mission

“Reduce complaints against the legal profession received and handled by this office, by:

- *developing and maintaining appropriate complaints handling processes*
- *promoting compliance with high ethical standards*
- *encouraging an improved customer focus in the profession*
- *developing realistic expectations by the community of the legal system”.*

Appendix 3 Complaint Statistics

Complaint Statistics for the Year Ended 30 June 1996		
<i>LSC</i>	Complaints Received by LSC	2,544
	Telephone Enquiries Received by the LSC	8,758
	Complaints Handled by LSC	988
	Complaints Referred by the LSC to the Law Society and Bar Councils	1,556
<i>Law Society Council</i>	Complaints Investigated by the Law Society Council	1,760
	Complaints Dismissed* by the Law Society Council	1,102
	Complaints Initiated by the Law Society Council	87
	Complaints Received by the Law Society Council as from 1 July 1992 and Remaining Open as at 30 June 1996	979
	Complaints Closed by the Law Society Council	1727
<i>Bar Council</i>	Complaints Received by the Bar Council as from 1 July 1993 and Remaining Open as at 30 June 1996	62
	Complaints Opened and Closed by the Bar Council	122
	Complaints Dismissed* by the Bar Council	50
<i>Legal Services Tribunal</i>	Matters Filed in the Legal Services Tribunal	44
	Matters Determined/Orders made by the Legal Services Tribunal	19

Source: Annual Report of the Office of the Legal Services Commissioner for the year ended 30 June 1996.

* *Note:* Dismissed on the grounds of no *professional misconduct* or no *unsatisfactory professional conduct*.

Glossary of Terms

Act	Legal Profession Act 1987
Councils	The Law Society Council and the Bar Council
Discretionary Costs	Those costs for purposes authorised by Section 67(2)(6) of the Act which the Law Society is to pay as from time to time determined by the Law Society Council and approved by the Attorney General
LSC	Legal Services Commissioner
LST	Legal Services Tribunal
Non Discretionary Cost	The cost for purposes authorised by Section 67(2)(a) of the Act which the Law Society is to pay from the Statutory Interest Account.
OLSC	Office of the Legal Services Commissioner
PSD	Professional Standards Division of the Law Society
SIA	Statutory Interest Account
STAF	Solicitors' Trust Account Fund

Performance Audit Reports

Agency or Issue Examined	Title of Performance Audit Report or Publication	Date Tabled in Parliament or Published
Department of Housing	<i>Public Housing Construction: Selected Management Matters</i>	5 December 1991
Police Service, Department of Corrective Services, Ambulance Service, Fire Brigades and Others	<i>Training and Development for the State's Disciplined Services: Stream 1 - Training Facilities</i>	24 September 1992
Public Servant Housing	<i>Rental and Management Aspects of Public Servant Housing</i>	28 September 1992
Police Service	<i>Air Travel Arrangements</i>	8 December 1992
Fraud Control	<i>Fraud Control Strategies</i>	15 June 1993
HomeFund Program	<i>The Special Audit of the HomeFund Program</i>	17 September 1993
State Rail Authority	<i>Countrylink: A Review of Costs, Fare Levels, Concession Fares and CSO Arrangements</i>	10 December 1993
Ambulance Service, Fire Brigades	<i>Training and Development for the State's Disciplined Services: Stream 2 - Skills Maintenance Training</i>	13 December 1993
Fraud Control	<i>Fraud Control: Developing an Effective Strategy</i> (Better Practice Guide jointly published with the Office of Public Management, Premier's Department)	30 March 1994
Aboriginal Land Council	<i>Statutory Investments and Business Enterprises</i>	31 August 1994
Aboriginal Land Claims	<i>Aboriginal Land Claims</i>	31 August 1994
Children's Services	<i>Preschool and Long Day Care</i>	10 October 1994
Roads and Traffic Authority	<i>Private Participation in the Provision of Public Infrastructure</i> (Accounting Treatments; Sydney Harbour Tunnel; M4 Tollway; M5 Tollway)	17 October 1994
Sydney Olympics 2000	<i>Review of Estimates</i>	18 November 1994
State Bank	<i>Special Audit Report: Proposed Sale of the State Bank of New South Wales</i>	13 January 1995
Roads and Traffic Authority	<i>The M2 Motorway</i>	31 January 1995

Agency or Issue Examined	Title of Performance Audit Report or Publication	Date Tabled in Parliament or Published
Department of Courts Administration Joint Operations in the Education Sector	<i>Management of the Courts: A Preliminary Report</i> <i>A Review of Establishment, Management and Effectiveness Issues (including a Guide to Better Practice)</i>	5 April 1995 13 September 1995
Department of School Education	<i>Effective Utilisation of School Facilities</i>	29 September 1995
Luna Park	<i>Luna Park</i>	12 October 1995
Government Advertising	<i>Government Advertising</i>	23 November 1995
Performance Auditing In NSW	<i>Implementation of Recommendations; and Improving Follow-Up Mechanisms</i>	6 December 1995
Ethnic Affairs Commission	<i>Administration of Grants (including a Guide To Better Practice)</i>	7 December 1995
Department of Health	<i>Same Day Admissions</i>	12 December 1995
Environment Protection Authority	<i>Management and Regulation of Contaminated Sites: A Preliminary Report</i>	18 December 1995
State Rail Authority of NSW	<i>Internal Control</i>	14 May 1996
Building Services Corporation	<i>Inquiry into Outstanding Grievances</i>	9 August 1996
Newcastle Port Corporation	<i>Protected Disclosure</i>	19 September 1996
Ambulance Service of New South Wales	<i>Charging and Revenue Collection (including a Guide to Better Practice in Debtors Administration)</i>	26 September 1996
Department of Public Works and Services	<i>Sale of the State Office Block</i>	17 October 1996
State Rail Authority	<i>Tangara Contract Finalisation</i>	19 November 1996
NSW Fire Brigades	<i>Fire Prevention</i>	5 December 1996
State Rail	<i>Accountability and Internal Review Arrangements at State Rail</i>	19 December 1996
Corporate Credit Cards	<i>The Corporate Credit Card (including Guidelines for the Internal Control of the Corporate Credit Card)</i>	23 January 1997
NSW Health Department	<i>Medical Specialists: Rights of Private Practice Arrangements</i>	12 March 1997
NSW Agriculture	<i>Review of NSW Agriculture</i>	27 March 1997
Public Service wide	<i>Redundancy Arrangements</i>	17 April 1997

Agency or Issue Examined	Title of Performance Audit Report or Publication	Date Tabled in Parliament or Published
NSW Health Department	<i>Immunisation in NSW: Implementing the Immunisation Register; Vaccine Distribution</i>	12 June 1997
Public Service wide	<i>Corporate Governance</i>	17 June 1997
Department of Community Services and Ageing and Disability Department	<i>Large Residential Centres for People with a Disability in New South Wales</i>	June 1997
The Law Society Council, the Bar Council and the Legal Services Commissioner	<i>A Review of Activities Funded by the Statutory Interest Account</i>	June 1997



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Postal Address

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Australia

Telephone (02) 9285 0155
Facsimile (02) 9285 0100
Internet <http://www.audit.nsw.gov.au>
e-mail mail@audit.nsw.gov.au

Office Hours: 9.00am - 5.00pm Monday to Friday

Contact Officer: Tom Jambrich
Assistant Auditor-General
+612 9285 0051

Denis Streater
Director Performance Audit
+612 9285 0075

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