

THE CHANGING FACE OF LAWYER REGULATIONⁱ

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The framework for regulating standards of conduct in the delivery of legal services stands in odd contrast to the frameworks that apply to the delivery of most other business services. It is long on tradition but short on contemporary regulatory best practice. It puts a heavy emphasis on ‘front end’ or ‘input’ controls – on controlling who can be admitted to the profession and then to practice and on articulating common law principles and detailed, highly prescriptive rules that define the standards of conduct expected of lawyers of ‘good repute and competency’. Unlike most other modern regulatory regimes, however, it puts very little emphasis on monitoring the ‘back end’ outputs and outcomes.

With the exception of conduct in relation to the handling of trust money, which has long been subject to audit, it seeks to monitor outputs and outcomes as good as exclusively by establishing mechanisms for dealing with complaints about the conduct of individual lawyers and, if the evidence after investigation suggests their conduct subject to complaint fell short of the requisite standard, for holding them to account before a disciplinary body. The problem is that complaints-driven regimes for monitoring and enforcing standards of conduct have significant and inherent weaknesses.

THE WEAKNESSES OF TRADITIONAL COMPLAINTS-DRIVEN PROCESSES FOR MONITORING AND ENFORCING PROFESSIONAL STANDARDS

There are at least four:

a) complaints-driven processes are almost entirely reactive

Complaints-driven regimes confine our gaze to the past. They are inherently reactive. We can exhort as much as we like as regulators but our powers in relation to complaints are confined to dealing with things only after the horse has bolted – only after some conduct has occurred and given rise to complaint or, in the case of ‘own motion’ investigations, which give us at least a measure of pro-active capacity, still only after some conduct has occurred that causes us to have reasonable suspicions. Imposing disciplinary sanctions for proven misconduct sends a message, of course, and no doubt has a deterrent effect, but it would be good to have powers as a regulator to partner lawyers and law firms to get in first and to do something constructive to prevent it.

b) complaints-driven processes are highly selective in their application

Lawyers who do residential conveyances and family law or personal injuries or deceased estates work are many times more likely to find themselves subject to complaint than lawyers who do commercial litigation or banking or building and construction law. Similarly lawyers who work in sole practice or small law firms are many times more likely to find themselves subject to complaint than lawyers who work in medium sized and larger law firms – to the extent that lawyers who work in medium sized and larger law firms are only nominally subject to any statutory oversight and in reality are almost entirely self-regulated, whether by their own consciences and character or their law firm's systems and processes or both.ⁱⁱ

I note as an aside that this simple fact puts the lie to, or appears to me to put the lie to the complaint one frequently hears from lawyers that they're over regulated and, unfairly, the most regulated of all the professions. Lawyers are certainly subject to a vast body of professional rules – rules they've developed themselves in the main through their professional bodies and not had imposed on them. But they are subject to very little regulation of the kind administered by the Australian Competition and Consumer Commission, for example, or the Australian Securities and Investments Commission, the Australian Prudential Regulation Authority or the Health Insurance Commission to name just a few of the better known regulators other professional service providers know very well.

Be that as it may, there are good public policy reasons why the ordinary folk of mainly modest means who engage small law firms to buy or sell their family home or negotiate their separation from their spouses and / or their access to their children or other matters of deep emotional concern should have a priority claim on our services and we should be unapologetic that they do. They are less well equipped to look after themselves when they believe their lawyer has given them less than a good or a fair deal than the wealthier, more sophisticated and typically corporate repeat clients who use the services of the larger law firms.

We shouldn't ignore the larger law firms even so, or other areas of law. We have a consumer protection role, to be sure, but we have an equally fundamental role to promote and enforce professional standards in the profession generally – and we can't assume for a

moment that the complaints data is a measure somehow of the prevalence or distribution of misconduct within the profession. We can't take it to mean that lawyers who do commercial litigation work and the like or who work for medium-sized and larger law firms are more ethical or have higher standards of conduct than lawyers who do conveyances or work in sole practice or small law firms. There is no good reason to believe that.ⁱⁱⁱ

The simple fact is that complaints measure the incidence of client dissatisfaction with lawyers, not of lawyer misconduct, and the dissatisfaction only of a sub-set of clients and probably not very accurately. The simple fact, too, is that some misconduct by its very nature is unlikely ever to come to attention by way of complaint – where lawyers collude with clients, for example, or where the misconduct is readily disguised or less rooted in the interactions between lawyers and their clients, such as breaches of their duty to the court.

The anecdotal evidence certainly contradicts any easy assumption that size brings with it some immunity. I've been told more than a few stories about wrong-doing by lawyers within medium-sized and larger law firms since I've been in this position, wrong-doing which could see them struck off - and told by people I trust and who are in a position to know^{iv} - and I know that none of that wrongdoing has come to attention by way of complaint.

Those are ultimately empirical questions of course and there has been precious little empirical research. The empirical evidence, scant as it is, is equally troubling^v and the indirect evidence - the evidence of the extraordinarily high incidence of emotional distress and psychological ill-health among lawyers,^{vi} for example, or of the havoc wreaked by unreasonable pressure to meet unrealistic billings targets or by performance against billings targets becoming an 'all purpose' performance measure for promotion and other purposes^{vii} - is positively sobering.

c) complaints-driven processes focus exclusively on minimum standards

Complaints-driven regimes confine our gaze equally to the very merest of minimum standards – the point at which conduct becomes 'unsatisfactory professional conduct' or worse and stands to attract a disciplinary sanction. But ethical lawyers set their sights

higher than trying not to fall below or just treading the line. There is more to acting well than not acting badly. We can exhort as much as we like, but it would be good to have powers as the regulator to set our sights higher than the merest of minimum standards, and to set the profession's sights higher too.

d) complaints-driven processes focus exclusively on the conduct of individual lawyers

Traditional complaints-driven regimes for monitoring and enforcing standards of conduct confine our gaze as regulators solely to the conduct of individual lawyers. They ignore the reality that their conduct is a function in part at least of the workplace cultures of the law firms within which they work – the reality is that lawyers sell their services for profit within commercial enterprises and that law firms like other commercial enterprises have workplace cultures that shape the conduct of the people who work for them, for better or worse. They give us a means of identifying and dealing with at least some of the ‘bad eggs’ in the profession but they leave incubator law firms entirely off-limits.

It puzzles us that the traditional complaints-based approach to enforcing professional standards makes individual lawyers solely responsible for their conduct and absolves their law firms a priori. The laws that regulate the professional conduct of lawyers stand in stark contrast in this respect to the laws which regulate our workplace conduct more generally and that are intended to set a standard. The laws in this and every other state and federally in relation to sexual harassment, for example, make employers vicariously liable for the proven misconduct of their employees and agents unless they can prove they took all reasonable steps to prevent the conduct from occurring.

Notably the common law appears to be heading in precisely the same direction. Courts in the United Kingdom, Canada and Australia are increasingly likely to find employers vicariously liable for the intentional acts of an employee if there's ‘a sufficiently close connection between the employee's actions and the duties of his or her employment, the employer materially increases the risk of the particular wrongdoing [by failure to give clear instructions, for example, or to maintain a policy of accountability or to monitor the employee's performance] and the wrong is done to vulnerable people put at risk by the employer's enterprise.’^{viii}

We can see no good reason why law firms shouldn't be similarly capable of being held to account for the unacceptable conduct of their employees, especially when there is reason to believe that a firm effectively condoned or tolerated such conduct, much less encouraged or expected it.

Surely we can find better ways to monitor and enforce standards of conduct among lawyers - ways that focus on the future, not just the past; that encourage them to do the right thing as much as threaten to out them if they do wrong; that engage all law firms, not just a sub-set of law firms; and that put law firm culture at the very front and centre of the regulatory regime. The framework for regulating incorporated legal practices shows us how.

THE FRAMEWORK FOR REGULATING PROFESSIONAL STANDARDS IN INCORPORATED LEGAL PRACTICES

Queensland's *Legal Profession Act 2007* (the Act) like its counterpart legislation in the other Australian states and territories allows law firms to structure themselves as companies and establishes the regulatory framework for the provision of legal services by (what the Act calls) incorporated legal practices. The new framework came into effect on 1 July 2007. It reflects the national model laws and is identical in all essential respects with the arrangements that have or soon will come into effect elsewhere throughout Australia.

Obviously we will regulate the provision of legal services by incorporated legal practices in part at least in exactly the same way we regulate the provision of legal services by any other law practice – by responding to complaints about or, if we suspect all is not as it should be, by initiating 'own motion' investigations into the conduct of the lawyers who work for them including their legal practitioner directors.

Notably however the Act requires incorporated legal practices to have at least one legal practitioner director and it imposes obligations on legal practitioner directors over and above their ordinary professional obligations as lawyers, not least:

- to 'keep and implement appropriate management systems to enable the provision of legal services by the practice under the professional obligations of Australian legal practitioners and other obligations imposed under this Act';

- to take ‘all reasonable action’ to ensure that practitioners employed by the practice comply with their professional obligations and, if they don’t, to take ‘appropriate remedial action’ including ‘all reasonable action... to deal with any unsatisfactory professional conduct or professional misconduct of a legal practitioner employed by the practice’; and
- to ensure that the conduct of other, non-legal directors does not ‘adversely affect the provision of legal services by the practice.’^{ix}

Legal practitioner directors who fail to take ‘all reasonable steps’ available to them to meet their obligations in this regard can be found guilty of unsatisfactory professional conduct or professional misconduct for that reason, and for that reason alone.

We will respond to complaints about and initiate own motion investigations in relation to the conduct of legal practitioner directors in relation to their additional obligations under that guise in exactly the same way we respond to complaints and initiate own motion investigations in relation to their professional obligations more generally.

Crucially, however - and this is the power that promises to drag the regulation of the profession into a new era - the Act empowers us to ‘conduct an audit [a compliance audit] of an incorporated legal practice about:

- the compliance of the practice, and of its officers and employees, with the requirements of [the Act] or a regulation, the legal profession rules or the administration rules so far as they apply to incorporated legal practices; and
- the management of the provision of legal services by the incorporated legal practice, including the supervision of the officers and employees providing the services’;

and it allows us to conduct an audit ‘whether or not a complaint has been made.’^x

Appropriate management systems

Incorporated legal practices are likely to have little in common if anything but for being incorporated - they will vary significantly in size; in the legal services they provide; in the

business services they provide in addition to legal services, if any; in the composition of their boards, and so on. It is tempting to conclude that appropriate management systems will have little in common either and there's a sense in which that's true.

Of course, but the term 'appropriate management systems' has a common defining characteristic in this context whatever a firm's circumstances. Its management systems might be designed to achieve and might in fact achieve any number of worthy management purposes but they count as appropriate not because they enable the firm to be more business like or profitable, for example, or to reduce its exposure to claims on its professional indemnity insurance, but because and only because they 'enable the provision of legal services by the practice under the professional obligations of Australian legal practitioners.'

Those are simple but powerful words. They mean that a firm's management systems count as appropriate in this context only by reference to the purposes they're intended to achieve and, even more fundamentally, by the impacts and outcomes they do in fact achieve. They count as appropriate only if they support and encourage and guide the firm's employees to do the right thing and discourage and deter them from doing the wrong thing - and, given that even the best systems might be less than completely successful in that regard, only if they maximise the likelihood any wrongdoing will be detected and dealt with, including with appropriate remedial action.^{xi}

Notably a firm's management systems extend well beyond its formal policies and procedures. Of course it's important that law firms have policies and procedures to support and encourage compliance with ethical standards but at the end of the day they describe only a firm's intentions, or perhaps only what their leaders say their intentions are, and can be as honoured in the breach as the observance.

Clearly a firm's systems in this context include not only its policies and procedures but the myriad other factors that influence what actually happens in practice - the unwritten rules and ways of doing things, the values, customs, practices, management behaviours and patterns of incentives and disincentives explicitly stated or otherwise that motivate and sustain the firm's lawyers to conduct themselves ethically or, alternatively, that leave them to their own ethical devices or worse, by actually encouraging them to conduct themselves unethically.

In short, then, a legal practitioner director's duty to ensure his or her firm keeps and implements appropriate management systems is a duty to ensure it develops and maintains an ethical infrastructure,^{xii} and ultimately an ethical workplace culture: 'it's not enough to have policies. It's not enough to have procedures. It's not enough to have good intentions. All of these can help. But to be successful, compliance must be an embedded part of [a] firm's culture.'^{xiii}

We all know it's true. We all know managers who boast about their open door but who never seem to notice how few of their employees ever come on in. We all know organizations that boast best practice policies and procedures in relation to whistle blowing and workplace bullying, including obviously policies that prohibit retaliation against employees or clients who blow the whistle or complain, but where no one ever dares to blow the whistle or complain for fear of retaliation.

The Act's requirement that legal practitioner directors keep and implement appropriate management systems looks at first blush qualitatively different and more onerous than the long-standing requirement that principals exercise 'reasonable supervision over solicitors and all other employees in their provision of legal services by the law practice.'^{xiv} That is by no means clear, and indeed it's hard to imagine anyone trying seriously to argue that sole practitioners or partners have any lesser obligations than legal practitioner directors of incorporated legal practices as it is, albeit obligations less well articulated and set out in the rules, not in statute.

We note that Riley's Solicitors Manual says that the rule implies that principals should 'set in place procedures and systems that all employees of a law practice must follow in processing work and regularly monitor compliance at various trigger points, as well as review those procedures and systems.' It goes on to say that 'the supervisory duty also has an educational aspect, namely to seek to inculcate in the lawyers and other staff being supervised an awareness and appreciation of their professional responsibility.'

The rule thus understood puts principals under very similar if not the very same obligations as legal practitioner directors and it would take a brave principal to argue the contrary, all the more so when the rule makes principals vicariously liable for the acts and omissions of their employees in certain circumstances and, as noted earlier, the courts are interpreting the law of vicarious liability more broadly of late.

Compliance audits

The obligation the Act imposes on legal practitioner directors of incorporated legal practices to keep and implement appropriate management systems might not be any great extension of the traditional obligation of principals but the power the Act gives the Commission to conduct compliance audits of incorporated legal practices is brand new - and the power to audit a firm's management systems and supervisory arrangements and audit its and its employees' compliance with their professional obligations is the power that threatens to drag the regulation of the profession into a new era. It puts regulatory focus on law firms and law firm culture as much as the conduct of individual lawyers.

The Act is silent about how we should go about conducting compliance audits other than requiring us to give the firms we audit a report of the audit.^{xv} Notably however it gives us all the same and more powers in relation to compliance audits than we have in relation to complaints and investigation matters - powers to require reasonable help and cooperation in conducting an audit, to require the production of documents and information, to enter places including if needs be by warrant, to examine books, to seize evidence, to examine persons and to hold hearings.^{xvi}

An audit is 'a review or examination of any aspect of the operations of [a] person or body'.^{xvii} A compliance audit by that account is a review of a firm's ethical performance - of the firm's and its employees' compliance with their corporate and professional obligations and the appropriateness of its management systems in the sense that we've just described. Our audit power is a power to conduct ethics audits, in effect.

We envisage conducting two types of audit - internal or self-assessment audits that we will expect incorporated legal practices to undertake themselves, through their legal practitioner directors, and external audits that we undertake, looking in from the outside.

a) internal audits

We have agreed with our counterpart regulators in New South Wales and Victoria to adopt the 'education towards compliance' approach that has been pioneered over recent years in New South Wales.^{xviii} We want to exercise our audit powers in such a way as to

encourage the highest possible level of voluntary compliance. We want to engage legal practitioner directors with problem-solving how they might best develop and continually improve their management systems and processes and workplace cultures to better support and sustain high standards of conduct, and in such a way as to engage them in a continuing conversation with us about their progress in that regard.

Of course it is possible that compliance audits will throw up evidence of misconduct of one kind or another in which case we will deal with it, and no doubt in some circumstances we'll use our audit powers specifically to go looking for it, but that's not their primary purpose. Their primary purpose is to encourage and to 'up the ante' on legal practitioner directors to keep and implement appropriate management systems and to continually improve them.

We have adopted the self-assessment audit process that has been used for some time now in New South Wales. We require the legal practitioner directors of every incorporated legal practice to audit their practice's management systems and supervisory arrangements soon after the corporation has given the required notice of its intention to commence legal practice. We require them to complete a pro forma self-assessment audit form - a form they will be able to complete on-line in the not too distant future - which asks them to rate how effectively their systems meet 'the ten objectives of a sound legal practice':

- competent work practices to avoid **negligence**
- effective, timely and courteous **communication**
- timely delivery, review and follow up of legal services to avoid **delay**
- acceptable processes for **liens and file transfers**
- shared understandings and appropriate documentation covering **cost disclosure, billing practices and termination of retainer**
- timely identification and resolution of **conflicts of interests**
- appropriate **records management**
- authorising and monitoring compliance with **undertakings**
- effective **supervision** of the practice and its staff, and
- compliance with trust account regulations and **accounting procedures**.

We hope and expect that legal practitioner directors will engage positively with the exercise and candidly identify any aspects of their practice's management systems that

might require or benefit from improvement. We want to work with them or refer them to their professional body or other advisors to get whatever assistance they may need to strengthen their systems and to engage them in a continuing conversation about their progress. Self-assessment audits, in other words, are 'gap analyses' or 'risk assessments' or 'management reviews' that become a baseline for future improvements to the practice's management systems and supervisory arrangements and reports on those improvements.

b) external audits

Clearly we need to develop and conduct a program of audits ourselves so that we can know whether the self-assessment audits legal practitioner directors undertake at our request are giving us a fair and reasonable and for that matter an honest appraisal of the actual state of play. We can't simply take their word for it.

So what might an effective program of external audits look like? It's a good question - there is no established practice as yet, unlike with self-assessment audits. Let's start by going back to basics. What do we want to achieve? What are the underlying principles? What are the strategic imperatives? How will we measure our success?

No doubt there are others but it seems to us that the audit program should satisfy at least four fundamental criteria, all of them obvious at one level and all of them worthy of close attention but which fit together only uneasily at best:

- firstly, it should be and be seen by incorporated legal practices and all our other stakeholders to be credible and robust, and sufficiently credible and robust to justify public confidence in the provision of legal services by incorporated legal practices and that we're on the job, as it were.

That suggests, if we turn our minds to performance indicators, that we should have regard both to the frequency of our audit interactions with incorporated legal practices and their quality. We will need to in due course to set ourselves more specific targets than these but we will have to do better in relation to frequency, surely, than getting around to auditing incorporated legal practices only once every few years or so. We shouldn't be in their face but we should be visible and have a presence.

That is because there is substantial evidence in relation to companies generally, if not law firms, that they tend to implement compliance management programs ‘only to the extent necessary to ensure that they look legitimate, or to the extent that they are forced to do so [or] feel compelled... by pressure from regulators or elsewhere.’^{xix} There is no good reason to think law firms will be any different.

Similarly we should be able to say in relation to quality that our audit program adds value in ways we can point to and defend – that it makes a difference and a difference for the better.

- secondly, our program of external audits should be fully consistent with and complement the ‘education towards compliance’ thrust of the initial self assessment audits. It should value-add by encouraging legal practitioner directors to stay engaged or to re-engage with efforts to continually improve their management systems and supervisory arrangements and to further their conversation with us as regulators about their progress in that regard.
- thirdly, we should allow for the inevitability that we will have limited resource to apply to conducting compliance audits and preparing the required reports. Notably New South Wales has allowed law firms to incorporate since 2001 and has more than 800 incorporated legal practices now, or about 20% of all its law firms, and the number is steadily growing. The number is steadily growing here, too. There were 97 incorporated legal practices in Queensland at 30 June 2008, only a year after law firms were first allowed to incorporate, and 161 or 12% of all 1398 Queensland law firms as at 28 February 2009. It is likely on current trends that there will be more incorporated than unincorporated law firms within only a few years.
- fourthly, we should allow equally for the fact that incorporated legal practices will have resource constraints also – and we should not add unnecessarily to their regulatory burden in any event. We should design an auditing program that keeps the compliance costs to incorporated legal practices proportionate to the potential

significance of the information we are seeking to obtain^{xx} and we can expect resistance if we don't, rightfully so.

It is difficult to see how we could possibly meet all four criteria at once if we conceive a program of external audits to require us to conduct regular and comprehensive reviews of every aspect of every incorporated legal practice's compliance with its obligations under the Act and of its management systems and supervisory arrangements – we don't and won't ever have the resources we need to do that.

It follows, putting all this together, that we envisage ourselves conducting comprehensive external audits only occasionally, and only of those incorporated legal practices we believe are most likely to fall short of expectation - and even then only of those particular aspects of a firm's systems we believe are most likely to fall short of expectation. We will need to rapidly acquire the data and the skills and the analytical capacity necessary to make evidence based risk assessments of those kinds.

How then within our limited capacity can we best add value? It seems to us that our audit program will have to satisfy at least the following secondary criteria, in addition to the four fundamental criteria we've identified already:

- we should direct our energies as auditors not to reviewing policy and procedure manuals and the like and checking them against the best practice characteristics of documents of that kind but to trying to find out how they're perceived and what's actually happening down the line - we should be collecting evidence about their ethical impacts and outcomes in practice.^{xxi}
- we should adopt the working hypothesis that we will always find problems that can be corrected and so lead to improvements and that we've missed something if we don't.^{xxii} This does not imply that we should be mistrustful or suspicious much less aggressive or adversarial in the way we go about our work - we're describing a methodological approach and not a pre-emptive finding.

Certainly we're better placed as the regulator to add value in this way than the legal practitioner directors of the firms we audit. Insiders will have more invested in their management systems than we will as dispassionate outsiders and they'll be

less inclined to go looking for anomalies or otherwise to find fault. Indeed they may find it difficult to ‘see’ a problem even when they’re looking right at it.^{xxiii} That is human nature, and so the role falls to us.

- we should target our scarce regulatory resource to where it is most needed. It follows that we’ll have to develop a capacity to make informed and evidence-based risk-assessments. That will be a two-pronged exercise. We should try to identify not only the law firms that are the least likely to deliver legal services ‘under the professional obligations of Australian legal practitioners’ but also the aspects of legal practice most likely to be problematic in this regard - billing practices, perhaps, or supervision.

We should maintain a credible presence even so among those firms we assess to be least at risk. We should allow for the fact that we’ll sometimes get our risk assessments wrong – it will always be an art not a science – and we should be at pains not to encourage legal practitioner directors in low risk firms to drop the ball by too often directing our attention elsewhere.

- we will have to have full regard for the fact that incorporated legal practices might have little in common but for being incorporated and design our auditing strategies accordingly, so that ‘no one size fits all’. So we should identify not just the aspects of legal practice most likely to be problematic in law firms but the aspects of legal practice most likely to be problematic within different categories of law firms - billing practices within large commercial law firms, perhaps, or supervision practices within high-volume residential conveyancing firms - and tailor make our audits to suit.

We should direct our limited resources to ‘the measurement of impacts within small, specific and well defined problem areas’ and design ‘creative-tailor made solutions [that] procure compliance while recognising the need to retain enforcement as the ultimate threat.’^{xxiv}

- finally and obviously we should get the best possible mileage from our scarce resources and minimize the compliance costs for the firms we are auditing by making the best possible use of the available technologies.

OUR COMPLIANCE AUDIT PROGRAM

We envisage conducting internal and external audits of different kinds with different frequencies and levels of intensity. We separate them into four kinds for performance reporting and broader descriptive purposes – self-assessment audits, annual surveys, web-based surveys and on-site reviews, as follows:

COMPLIANCE AUDIT PLAN					
audit type	frequency				
	on start up	annual	every 3 years	periodic	as required based on risk assessment
self-assessment	yes		yes		
annual survey	yes	yes			
web-based survey				yes	yes
on-site review					yes

a) self assessment audits

I described self-assessment audits earlier in the paper and will not repeat myself here. The pro forma self-assessment audit form is readily accessible on the Commission's website and we hope to make it available on-line sometime later this year. It's an only slightly modified version of the form that has been used in New South Wales for some years now.

I will add only that we envisage asking legal practitioner directors to review their initial self-assessment every three years or thereabouts. This should not be an onerous exercise – the on-line version of the form we will use for second and subsequent self-assessment audits will default to the original self-assessment and in that way allow legal practitioner directors to update only the information that has changed. The second and subsequent

self-assessment audits will track any changes and record a firm's efforts to make continual improvements against its own initial 'gap analysis' or baseline self-assessment.

b) annual surveys

We have altered the pro-forma self-assessment that was pioneered in New South Wales only to include an entirely new section at Part A which we will ask legal practitioner directors to update annually. It asks them to give us some basic information about their firm including information about its non-legal directors and their occupations, its shareholders, its primary areas of practice, the services it provides in addition to legal services (if any), its gross fee income, the number of lawyers it employs and the number of claims that have been made and paid out against its professional indemnity insurance.

We will use this information to check whether the corporation is complying with its obligations in relation to disqualified persons, for example, but also and more fundamentally to complement the self-assessment data and our existing complaints data and to help us develop risk indicators and over time increasingly sophisticated evidence based risk analyses which will allow us to identify the incorporated legal practices most likely to be at ethical risk. We want to develop a capacity to target our regulatory resource to where it is most needed and to do that in an educated way.

c) web-based surveys

We plan to develop a varied and ever-expanding suite of short, sharp web-based surveys which test discrete aspects of a law firm's ethical infrastructure. We will design and direct the surveys to the particular aspects of practice we believe to be most problematic, either for all law firms or particular kinds of law firms, and we plan to require all incorporated legal practices to complete a relevant web-based survey annually, not just those of them we assess to be most 'at risk'.

We will design the web-based surveys to have the following characteristics:

- they will minimise the compliance costs to the firms subject to audit by taking no more than and preferably less than 30 minutes to complete. They will be equally

resource-friendly our point of view also. We will use software that automatically calculates the key results.

- they will be directed not just to a firm's legal practitioner director(s) but to all its employees, or in large firms at least significant samples of the different levels and classifications of their employees – directors, senior lawyers, junior lawyers, paralegals and other non-legal staff. We want the employees to give us, and the firm, a window on how the firm's policies and procedures and systems are understood and implemented 'down the line' by the different levels and classifications of their people.
- they will encourage respondents to be frank, by guaranteeing their anonymity.^{xxv}
- they will have an educational value, if we get the questions right, by prompting each individual respondent to reflect on the significance of the questions and the implications of their answers both for them as individuals and their firm.
- they will add value from a firm's point of view also, by 'taking its ethical pulse' and, because we will give a firm its results, by allowing it 'hold an ethical mirror' to itself. The individual respondents will remain anonymous, but their answers and in particular the patterns of their answers across the different levels and classifications of the firm's employees and, if the firm has more than one office, the patterns of their answers across its different offices will be a handy indicator of which of its management systems if any might need improvement.
- they will add value from our point of view, too, as a risk indicator. The answers and the patterns of answers across the different levels and classifications of a firm's employees might be positively encouraging or they might be anomalous, by suggesting that the firm's systems are not always reflected in what actually happens 'down the line' and stand to be improved by clarification or further training and the like. Equally they might hint at deep-seated problems that warrant a closer look by means of a comprehensive on-site review. Certainly the information we obtain in this way will add powerfully to the risk information we will already have at our disposal, including the self-assessment and annual survey data and the firm's complaints history.

- they have potential to add further value again, if as we envisage we publish the aggregated and de-identified results. That will enable law firms to compare their performance with the performance of their law firm peers; it will enable both them and us to identify not only problem areas but also how the best firms are resolving them; and it will serve the public interest by exposing aspects of law firm culture to public scrutiny.

d) on-site reviews

On site reviews by their very nature will be a more resource intensive exercise both from our point of view and point of view of the law firms subject to review, and it follows that we envisage conducting reviews of this more intensive kind significantly less frequently than web based surveys and only on an ‘as needs’ basis - on the basis of a risk assessment that tells us that a firm or some aspects of its practice are or are very likely to be non-compliant.

We envisage on-site reviews comprising tailor-made combinations of some or all the following kinds of activities:

- further and tailor-made web-based surveys of the kinds we’ve already described;
- traditional desk-top policy and procedure reviews;
- detailed analyses of the firms’ complaints history, including detailed analyses of the investigation files held by the Commission;
- interviews with legal practitioner directors, supervisors and managers;
- interviews with and / or focus groups of individual employees ‘down the line’;
- interviews with and / or focus groups of clients, including but not only clients who have lodged complaints with the Commission;
- interviews with third parties including, for example, practitioners from other law firms that have regular dealings with the law firm subject to audit;
- reviews of selected or randomly selected client files^{xxvi} and bills, in-house complaints registers and the like;
- client satisfaction surveys; and possibly

- mystery or ‘shadow’ shopping and / or complaints - having real or pretend clients deal with the firm and behave exactly as a genuine client (or complainant) might behave and asking them to report their experience. ^{xxvii}

OUR PROGRESS AND EXPERIENCE TO DATE

We’ve designed the compliance audit program I’ve just described deliberately to overcome the weaknesses of the traditional complaints-driven regimes for monitoring and enforcing standards of conduct in the delivery of legal services and on paper at least it does just that – it focuses on future conduct, not past conduct; it focuses on prevention, by supporting and encouraging lawyers and law firms to do right, not on policing and threatening to ‘out’ them if they do wrong; it encompasses all law firms and all areas of law, not just the law firms and areas of law that attract complaints; and it puts law firm culture at the very front and centre of the regulatory regime, not simply individual lawyers.

It looks like a way forward, but it’s important we make the case not only with policy arguments based on principle but with evidence. The early signs are all encouraging.

a) self-assessment audits

We have asked the legal practitioner directors of all 161 law firms that gave notice by 28 February 2009 of their intention to commence legal practice as incorporated legal practices to complete the self-assessment audit. So far more than 100 of them have completed the exercise and the remaining 50 or so all commenced as incorporated legal practices only relatively recently and are completing the audit as we speak. We’ve had excellent cooperation.

Notably two-thirds of the firms that have completed the self-assessment report having made improvements to their systems as a result. Interestingly, because this is the one area where all law firms have always been subject to audit, they identified significantly less room for improvement in their systems for handling trust monies than any of their other systems.

It’s too early locally to measure the impact of undertaking the self-assessment process but not in New South Wales where incorporated legal practices have been allowed since

2001. Dr Christine Parker of the Melbourne University Law School last year researched the six years of data and found ‘compelling evidence’ that requiring incorporated legal practices to keep and implement appropriate management systems and to undertake self-assessment audits makes a difference, and a big difference.^{xxviii}

She found that the complaint rate per practitioner per year for incorporated legal practices *after* self-assessment is one third the complaint rate before self-assessment, and that this huge drop in complaints is ‘statistically significant at the highest level’. She found that the complaint rate per practitioner per year for incorporated legal practices is also one third the complaint rate for traditionally structured firms and that while complaint rates per practitioner per year are lower in larger than smaller firms and lower in city than rural and suburban firms, ‘the fact that an incorporated legal practice has been through the self-assessment process is a more significant predictor of the rate of complaints’. That is powerful evidence of the effectiveness of the compliance audit power. We will replicate the study locally in due course and expect the findings to be replicated also. We’ll see.

b) annual surveys

The annual surveys have a different purpose. The survey data enables us to profile incorporated legal practices for profession analysis purposes and to compare and contrast them with traditionally structured firms. We will routinely publish the aggregated and de-identified data in our annual reports.

More importantly, however, the data will help us when combined with the self-assessment and complaints data we have at our disposal to identify the firms most at risk of non-compliance and to target our auditing efforts accordingly. That will be a learning by doing exercise and will take some time to get right, but we are beginning to define criteria and to build a ‘risk alerts’ capability into our database so it notifies us automatically whenever the criteria are met.

c) web-based surveys

We have developed three web-based surveys at the time of writing and they are all readily accessible on the Commission’s website - an audit of practice culture, or workplace culture check; an audit of billing practices in medium to large law firms; and an audit of

complaints management systems in law firms. We have several further surveys in various stages of development including surveys about civility, supervision practices and duties to the courts and third parties.

We designed those surveys in close consultation with sympathetic lawyers and legal academics including Dr Parker and we road-tested earlier version with several law firms. They are better and all the more practical and relevant for that and we will continue with that collaborative approach into the future and no doubt continue to improve them through ‘learning by doing’.

The feedback thus far has been encouraging. A partner from one of the large national law firms who road-tested the billing practices in medium to large law firms survey volunteered that ‘the survey was a useful reminder of the issues that arise in best billing practice. It has prompted us to review our own management systems to see how effectively they deliver best billing practice and given us some very good ideas as to how to improve our systems.’^{xxix}

I note, too, that Jonathan Shaw from Blakes sought and readily got my permission to include a large slab of that billings practices survey in the presentation he is giving at the symposium this afternoon. I take that to be an implicit endorsement also.

We haven’t run any of the surveys yet as compliance audits but we soon will - we plan to ask many (50 or more) of the incorporated legal practices that commenced in 2007-08 to complete the complaints management systems survey during April or May and to publish the aggregated and de-identified results on the Commission’s website in June. We will ask them to give us feedback and will publish that information also.

Notably we approached 15 firms to ask them to consider completing the workplace culture check survey in February and all 15 firms agreed. Only 3 of them were incorporated legal practices. I am very grateful to each of them but unable for the best of reasons to acknowledge my gratitude publicly, or at least in a way that identifies them. They can out themselves if they wish but the surveys have been very carefully designed to allow not only the individual people who complete them to remain anonymous but to allow participating law firms to remain anonymous also, and to identify themselves only by a secret code.

A total of 478 people from the 15 participating firms and (because some of them have more than one office) from 30 law firm offices completed the surveys. We have published the results on the Commission's website, both the aggregated results and the results for each of the 15 firms and 30 branch offices.

They make interesting reading, not least the cross-tabulation reports which compare how the 478 people who completed the surveys answered the questions depending on the nature of their employment with the firm, as partners, consultants, associates, or paralegals, for example; depending on the length of their post admission experience, for those of them who are lawyers; and depending on their gender. We plan to subject the raw data to more detailed statistical analysis and to publish that information over coming weeks and months.

Notably 73% of the 478 individuals who completed the survey said they found the exercise either very helpful or helpful and only 3% said they found it unhelpful. We intend to seek feedback from the firms' points of view also. We want their leaders to tell us how it might be improved, whether undertaking the survey prompted them to make any changes to the ways they go about things and whether undertaking similar surveys annually would impose too great a regulatory burden were it be formally required of them. We will publish that feedback in due course but the early and anecdotal feedback is all positive – several of the managing partners have volunteered that they've made changes already, to their induction programs for example and to ethics as a standard agenda item at partners meetings.

d) on-site reviews

We have commenced 2 but completed only 1 on-site review thus far. It comprised a detailed analysis of the firm's complaints history; a tailor-made web-based survey that addressed the issues that arose in the complaints; structured interviews with the legal practitioner director, employed solicitors and paralegals 'down the line'; and a reviews of randomly selected client files.

It was a useful exercise from our point of view and I would have thought from the firm's point of view also. It identified significant discrepancies in professional practice between

the firm's head office and a branch office that exposed the firm, its employees and its clients to risk of both negligence and misconduct, and it resulted in correspondingly significant remedial action and improvements to the firm's management systems: a win-win result.

IN CONCLUSION

The regulatory arrangements in relation to incorporated legal practices threaten to change the face of lawyer regulation by modelling new and important and effective ways of monitoring and enforcing standards of conduct in the delivery of legal services. They embrace the obvious - that the law is not only a profession but a business; that legal services are delivered by individual lawyers to be sure, but by individuals who sell their services for profit within commercial enterprises; that law firms like other commercial enterprises have organisational and workplace cultures that shape the ethical conduct of the people who work for them, for better or worse; and, accordingly, that law firm culture should be at the very front and centre of the regulatory regime.

The regulatory regime for monitoring and enforcing standards of conduct in the delivery of legal services should be modified to explicitly require sole practitioners and partners within traditionally structured law firms to keep and implement appropriate management systems just like legal practitioner directors of incorporated legal practices, and it should be modified to empower the Commission as the regulator to treat all law firms equally, by empowering it to conduct compliance audits of all law firms, not just incorporated legal practices. Those changes stand to be the single most constructive thing governments could do to improve standards of conduct in the delivery of legal services.

There are good policy arguments and now increasingly strong evidence-based policy arguments to believe changing the regulatory framework in those ways would significantly improve standards of conduct in the profession. Those changes would complement the current complaints-driven regulatory regime by addressing its inherent weaknesses and position the Commission to more effectively partner lawyers and law firms to make continual improvements.

No doubt the counter-argument is that the compliance costs would outweigh the benefits. That is of course possible but it is by no means inevitable. We designed the auditing program I've

just described deliberately and as a matter of principle not to add any significant additional regulatory burden to law firms unless there is some demonstrable risk-related reason in all the circumstances that justifies it. We've designed it to be consistent with the Administrative Review Council's best practice principle that compliance costs should be kept proportionate to the potential significance of the information we're seeking to obtain.^{xxx}

In any event I think it's as good as inevitable that the regulatory regime will change and in just the ways I'm suggesting it should. Incorporated legal practices make up a sizeable minority of law firms already and on current trends will become a substantial minority of law firms in the not too distant future and quite likely even the majority. It will make no sense in these circumstances to have two regulatory regimes.

Nor does it make sense at a point in history when regulatory arrangements in the broader economy have let us down so badly to leave the majority of lawyers and law firms effectively beyond any regulatory scrutiny.

ENDNOTES

ⁱ This talk is partly an abbreviated and partly an expanded and updated version of a paper I gave with Scott Mclean at the Third International Legal Ethics Conference in July 2008 entitled *Incorporated Legal Practices: Dragging the Regulation of the Legal Profession into the Modern Era*, an edited version of which will appear in the journal *Legal Ethics*, Volume 11, No.2 (in press).

ⁱⁱ The Commission publishes detailed complaints data by way of appendix to its annual reports which can be accessed at www.lsc.qld.gov.au. About half the complaints the Commission deals with are about the conduct of lawyers in family law matters (about 20%), residential conveyances (about 20%) and personal injury matters (about 10%). We know that 60% of all the complaints we dealt with in the 2006-07 reporting year were about sole practitioners; 84% were about lawyers who worked for firms with five or fewer partners (including sole practitioner firms); and only 3% were about lawyers who work in firms with 10 or more partners – yet only 30% of Queensland lawyers are sole practitioners; only 55% work in firms with five or fewer partners (including sole practitioner firms); and almost 30% work in firms with 10 or more partners.

ⁱⁱⁱ It is likely that the typically wealthy and corporate clients who use the services of the larger law firms are not only better equipped to look after their own interests when they believe they've been dealt with less than appropriately but that they do, by using or threatening to use their economic leverage by taking their business elsewhere. They are also less inclined than the ordinary folk who use the services of small law firms to complain to statutory regulators. It might also be that lawyers in larger law firms typically work in teams and accordingly that it's hard to attribute responsibility for some perceived shortcoming to any particular member of the team.

No doubt some people will argue that the complaints data simply reflect a reality in which lawyers in medium sized and larger law firms are less likely to act unethically than their small firm peers. They might argue, for example, that lawyers in larger law firms have more and better opportunities to seek advice and guidance from their peers and supervisors and generally to discuss ethical issues, and that their firms have economies of scale that allow them to better support them to act ethically through in-house training programs and the like. They might also argue that there will be more people to notice misconduct in larger firms, too, and hence that lawyers who do the wrong thing are less likely to be able to hide what they're doing or otherwise to get away with it.

No doubt this is all true of the best firms. The problem however is that team environments are a double-edged sword. They can just as easily discourage ethical conduct – they can make it less likely that individual team members will take personal responsibility for the actions of the team, make team members unwilling to rock the boat by questioning whether some team decision or strategy or course of action is ethical, and diminish the team members' capacity even to 'see' ethical issues that might be staring them in the face. See Parker et al 2008 generally but especially at pp. 5-8.

^{iv} I hasten to add that the people who told me were prevented by duties of confidentiality from naming the people concerned.

^v See Elizabeth Chambliss and David B Wilkins, *Promoting Effective Ethical Infrastructure in Large Law Firms: A Call for Research and Reporting*, 30 Hofstra Law review 691, 2001-2002 especially pp.698-699.

^{vi} Let me quote from a paper I gave at the recent BAQ Annual Conference (which includes the references): 'The BeyondBlue and Beaton Consulting Annual Professions Survey of April 2007 found that lawyers are two and a half times more likely to suffer from clinical depression than other professionals. Late last year Sydney University's Brain and Mind Research Institute put it at four times more likely. That research involved 2400 lawyers and found that one in three solicitors and one in five barristers report depression. And it seems lawyers are more likely to turn to non-prescription drugs and alcohol to manage their depressive symptoms than their professional peers, and that about one in three 'self-medicate' in this way.

The local data closely mirrors the data elsewhere. Various North American studies show that lawyers are twice as likely to suffer depression as the general population, three and a half times more likely than other employed people and four times more likely than other professionals. Studies show that lawyers are twice as likely to become alcoholics and, if they are male lawyers, twice as likely as men in general to commit suicide. According to one leading Canadian psychiatrist, one in every eleven lawyers contemplates suicide every month.’

^{vii} See Parker at al 2008 and also Christine Parker, *Peering Over the Ethical Precipice: Incorporation, Listing and the Ethical Responsibilities of Law Firms*, a paper first presented as the J. Donald Mawhinney Lecture in Professional Ethics at the University of British Columbia Law School on 12 February 2008, in particular the discussion above footnotes 38 and 40 and the references cited in those footnotes. Dr Parker presented a later version of the same paper at The Future of the Global Law Firm Symposium held at the Center for the Study of the Legal Profession, Georgetown Law Center, 17-18 April 2008.

See also Chamblis and Wilkins, 2002-03, above, at pp.342-343; Susan Saab Fortney, *Soul for Sale: An Empirical Study of Associate Satisfaction, Law Firm Culture and the Effects of Billable Hours Requirements*, UMKC Law Review, Vol 68, 2000-2001; and Lisa G Lerman, *A Double Standard for Lawyer Dishonesty: Billing Fraud Versus Misappropriation*, 34 Hofstra Law Review, 847, 2005-2006. More generally, see Patrick J Schiltz, *On Being a Happy, Healthy and Ethical Member of an Unhappy, Unhealthy and Unethical Profession*, 52, Vanderbilt Law Review 871, 1999 and the other articles Chambliss and Wilkins (2002-03, above) cite at p.242, note 10. Numerous articles to similar effect appear regularly in legal journalism such as *Lawyers Weekly*.

^{viii} see Joshua Teague, *Vicarious liability: a comparative review of the common law after Ffrench*, (2008) 16 Tort L Rev 39 and more generally the Insurance Law Bulletin, Vol 21 No. 5, April 2006.

^{ix} See the *Legal Profession Act 2007* (Qld) Part 2.7, especially sections 117-129, 132 and 143, and also section 574. Note that legal practitioner directors, employees of incorporated legal practices, the corporation itself and in certain circumstances other people are liable for disciplinary and / or criminal sanction for a range of ‘misconduct’ that goes well beyond the additional duties of legal practitioner directors that we specifically mention in the main body of the text.

^x section 130

^{xi} This is the effect of sections 117(3), 117(4), 118(2) and 118(3) of the Act taken together.

^{xii} ‘the legislative provisions that... require incorporated legal practices to have an appropriate management systems [are] in effect a requirement that incorporated legal practices consciously implement an ethical infrastructure as part of their new business structure’ - Parker et al, 2008, at p.21.

^{xiii} Lori A Richards, Director, Office of Compliance Inspection and Examinations, US Securities and Exchange Commission, *The Culture of Compliance*, Spring Compliance Conference: National Regulatory Services, Tuscon, Arizona, April 23, 2003.

See, for example, Linda Klebe Trevino, Gary R Weaver, David G Gibson and Barbara Ley Toffler, *Managing Ethics and Legal Compliance: What Works and What Hurts*, California Management Review, Volume 41, Issue 2, January 1999. Their research shows that a company’s compliance with its ethical obligations is determined less by the specific characteristics of its formal policies and procedures than by its employees’ perception that the company and its leaders ‘do as they say’ by demonstrating ethical leadership, or their perception that the company and its leaders are motivated by self-interest and demand unquestioning obedience. It shows that companies and their leaders demonstrate ethical leadership among other things by openly discussing ethical issues that arise in the course of doing business, by treating their employees fairly, by rewarding ethical conduct and by showing concern for external stakeholders.

See also Christine Parker, Adrian Evans, Linda Haller, Suzanne Le Mire and Reid Mortensen, *The Ethical Infrastructure of Legal Practice In Larger law Firms: Values, Policy and Behaviour* which has been accepted for publication in the University of New South Wales Law Journal during 2008 (and which we will refer to as Parker et al 2008), especially p.8, the references in footnotes 17-21, and p. 33.

Parker and her colleagues discuss and develop the concept of ethical infrastructure in some detail. They say ‘the term ‘ethical infrastructure’ was originally coined in the United States to refer to policies and structures that support compliance with professional conduct rules’ and they refer to the work of Ted Schneyer (see below) and Chambliss and Wilkins (above). They go on to say they use “a broader conception of ethical infrastructure that is concerned with positively promoting individual and corporate behaviours, structures and cultures that support the ethical values that lie behind the rules... The ethical infrastructure of a firm should not be seen merely as the formal ethics policies explicitly enunciated by management. All management policies, priorities and initiatives – formal and informal, and explicitly stated or implicitly assumed – can undermine or support ethical practice within a firm... The most important aspects of ethical infrastructure are less tangible than management systems for ensuring compliance with ethical rules. They have much more to do with the way the culture of the law firm connects with and empowers individual lawyers to express their own ethics and values in their work, especially by feeling free to raise ethical issues with colleagues and supervisors - and have those queries taken seriously, discussed, and, where necessary, acted on” - see pp.3-4, 4-5 and 33.

^{xiv} This is Rule 37 of the Queensland Solicitor's Rules. The same rule applies elsewhere – see Rule 5 of the Solicitor's Regulation Authority Code of Conduct for England and Wales, for example, or the American Bar Association's rule 5.1.

^{xv} section 130(3)

^{xvi} sections 131 and 540-581

^{xvii} Australian National Audit Office, *General Guidance on the Conduct of Performance Audits*, July 2003, p.1.

^{xviii} See Steven Mark and Georgina Cowdroy, *Incorporated Legal Practices – A New Era in the Provision of Legal Services in the State of New South Wales*, Penn State International Law Review, Volume 2, Number 4, Spring 2004 at p.671; and Steven Mark and Molly Hutcherson, *New Structures for Legal Practices and the Challenges They Bring for Regulators*, published on the website of the Office of the Legal Services Commission New South Wales (<http://www.lawlink.nsw.gov.au/olsc>)

^{xix} Christine Parker and Vibeke Lehman Nielsen, *Do Businesses Take Compliance Systems Seriously? An Empirical Study of the Implementation of Trade Practices Compliance Systems in Australia*, Melbourne Law Review, Vol 30, 2006, at pp. 443, 444, 474 and 482-483.

^{xx} This principle echoes one of the best practice principles (principle 19) enunciated in the draft report of the Administrative Review Council published earlier this year under the title *Government Agency Coercive Information-Gathering Powers*.

^{xxi} We have drawn heavily on Dr Christine Parker's work in getting our thinking to where it is not least her empirical study several years ago now of the compliance audit programs conducted by the Australian Competition and Consumer Commission (ACCC) and the Australian Securities and Investments Commission (ASIC) under the title *Regulator Required Corporate Compliance Program Audits*, Law and Policy, Volume 25, No. 3, July 2003. She describes 'a tendency for [the] audit methodology to focus on management systems at the expense of forensic investigation of harm done or likely to be done to consumers and investors'. She noted that most of the audits she studied 'relied primarily on documentation of the system and discussions with senior management, [that] there is no inspection, let alone testing of the processes in action, [that] most of these desk audits are really only capable of providing a view about the intended *design* of the compliance program p[and that] the methodologies were not rigorous enough to discover how compliance programs are actually

implemented [or] what *outcomes* they are achieving.’ We note that we understand both the ACCC and ASIC have since responded to Dr Parker’s criticisms and adjusted their methodologies accordingly.

^{xxii} Parker, 2003.

^{xxiii} Parker et al 2008 discuss at pp.9-11 how cultural factors can impact a person’s capacity to ‘see’ ethical issues.

^{xxiv} Australian Law Reform Commission Discussion Paper 65: *Securing Compliance – Civil and Administrative Penalties in Australian Federal Regulation*, paragraphs 4.100-4.103 at pp.137-138.

^{xxv} The evidence suggests that respondents answer on-line surveys more honestly than face to face surveys. See Peter Comley, *Online Survey Techniques: Current Issues and Future Trends*, Interactive Marketing, Vol 4, No 2, October/ December 2002, pages 156-169 at page 160

^{xxvi} This would almost certainly require a legislative amendment in Queensland to allow us to require a legal practitioner director to produce the client files notwithstanding any duty of confidentiality the firm owes its clients (and requiring us of course not to disclose the information we obtain or to use it for any purposes other than discharging our regulatory responsibilities under the Act).

^{xxvii} This is a familiar strategy in the context of testing the quality of customer service provided by retailers, for example, but it can and has also been used to test the quality of professional advice including legal advice. ASIC have used mystery shoppers to test the quality of financial planning and superannuation advice (for example, see ASIC Report 18, *Survey on the quality of financial planning advice*, February 2003 and Report 69, *Shadow shopping survey on superannuation advice*, April 2006) and researchers in the UK have used mystery shoppers to test how lawyers respond to clients who approach them for advice in areas of work outside their areas of specialist expertise (for example, see Richard Moorhead and Avrom Sherr, *An anatomy of access : evaluating entry, initial advice and signposting using model clients*, 2003, <http://www.lsrc.org.uk/publications/modelclientpaper.pdf>)

^{xxviii} We have published the findings at the bottom of the Incorporated Legal Practices and Multi-Disciplinary Partnerships page on the Commission’s website under the heading *Research report: Assessing the impact of management based regulation on NSW incorporated legal practices*, 25 September 2008.

^{xxix} The comment was made in private correspondence.

^{xxx} We are referring to the best practice principles enunciated in the draft report of the Administrative Review Council headed *Government Agency Coercive Information Gathering Powers*, in particular best practice principles 2 and 19 which require agencies to have ‘reasonable grounds’ before using coercive information powers and to exercise their powers so that the compliance costs are ‘proportionate to the potential significance of the information sought’.