

**REGULATING THE PROVISION OF LEGAL SERVICES
BY INCORPORATED LEGAL PRACTICES**

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Queensland's *Legal Profession Act 2007* (the Act) like its counterpart legislation in the other states and territories allows law practices to adopt business structures other than the traditional sole practitioner and partnership structures and in particular to form companies and to trade as incorporated legal practices - and of course having done that it creates the regulatory framework for the provision of legal services by incorporated legal practices. The Act is premised on the national model laws and the framework it creates is identical in all essential respects with the frameworks established under the counterpart legislation elsewhere.

The advent of incorporated legal practices gives us two exciting opportunities as regulators that we haven't had in the exercise of our longer standing responsibilities in relation to complaints and discipline. We have the opportunity firstly to ensure a consistency of regulatory practice across state and territory borders. We have the opportunity secondly to supplement the traditional regulatory approach which is geared to enforcing minimum standards by the threat of sanction with new and innovative and ultimately more effective regulatory strategies that are geared to promoting higher standards than the mere minimum.

the opportunity to achieve a national consistency of approach

We shouldn't underestimate the importance of the opportunity to secure a consistency of regulatory approach and taking the opportunity to seize it. It is understating things to say that would be desirable but it won't happen merely because we have a consistency of legislative approach. We are going to have to work at it. We are going to have to work at it all the harder if we want our desire for consistency to leave room for creativity and to spare us the lowest common denominator.

We won't dwell on this but (as has been noted in earlier sessions at this conference) one of the ironies of the recently 'harmonised' legislative approach to complaints and discipline is that it doesn't flow on to give us a harmonised regulatory approach - we have a nationally uniform definition of the term 'unsatisfactory professional conduct' but we interpret and apply the term differentially across state and territory borders. That is because our local legislation gives us different powers as regulators and those differences drive us to interpret and apply the term differentially in order that we might achieve our common fundamental purpose of providing consumers a means of redress.

The good news is that the Legal Services Commissioners in Queensland and New South Wales have agreed and the Chief Executive Officer of the Legal Services Board in Victoria has agreed to seek her Board's agreement to all of us going about our regulatory roles in relation to incorporated legal practices in the same or as similar a way as possible and we have embarked upon continuing discussions to that end. We want to achieve not merely a notional consistency of approach but a thorough going consistency which goes to the very nuts and bolts – and so, for example, we have started detailed discussions directed to developing our respective databases to achieve identical functionalities. We want to be able to capture, store, and report comparable data and analyses for benchmarking and other purposes including risk assessment. That will be a first, if we can achieve it, and will stand in marked contrast to our databases in relation to our longer standing jurisdictions over complaints.

the opportunity to craft a new approach to regulating the provision of legal services

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 their legal practitioner directors and employees, including of course complaints and investigation matters that go not only to their professional obligations as lawyers but also, if they are legal practitioner directors, to their additional obligations under that guise.

We note in this regard that legal practitioner directors have more than a few additional obligations including but not only to 'keep and implement appropriate management systems to enable the provision of legal services by the practice in accordance with a practitioner's professional obligations'; to take 'all reasonable action' to ensure that practitioners employed by the practice do not breach their professional obligations; to take 'appropriate remedial action' in the event that they do; to ensure that the conduct of other, non-legal directors does not 'adversely affect the provision of legal services by the practice'; to ensure that the other directors are all suitable for the role; to ensure that the corporation prevents 'disqualified persons' from engaging in legal practice for the corporation or otherwise being an officer or employee of the corporation or to share receipts; and to ensure that the practice meets its disclosure obligations. ⁱ

Regulatory regimes based on complaints are limited however by being inherently reactive in nature. We can as regulators exhort as much as we like but our powers 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, only after some conduct has occurred that causes us to have reasonable suspicions. It would be nice to be able to get in first.

Regimes based on complaints are further limited by confining our gaze as regulators to the very minimum standards - to the prospect that the conduct subject to complaint will amount to unsatisfactory professional conduct or worse – when of course ethical lawyers should aspire to something more than merely satisfactory professional conduct, perhaps even excellence. Again we can exhort, but it would be nice as regulators to have some power to set our sights higher than the mere minimum standards, and to set the profession’s sights higher too.

The regulatory regime in relation to incorporated legal practices gives us our opportunity. The Act empowers both the Commission and the Queensland Law Society to ‘conduct an 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 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’.ⁱⁱ

The Act is silent about how we should go conducting an audit other than requiring us to give a report of an audit to the incorporated legal practice concerned.ⁱⁱⁱ Importantly however it gives us all the same and more powers in relation to 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.^{iv}

compliance audits of the provision of legal services

We will undertake our regulatory role primarily by means of two types of compliance audit - internal (or self-assessment) audits and external (or review) audits and we will come back to that shortly.

We have agreed with the Law Society locally that in Queensland as in New South Wales the Commission will take the lead regulatory responsibility by conducting compliance audits and that the Law Society will accept responsibility for supporting and assisting incorporated legal practices and their legal practitioner directors to comply with their obligations by providing advisory and other membership services.

We have also agreed with the Law Society and in this respect more crucially with the Legal Services Commissioner in New South Wales and we hope and expect in the near future with the Legal Services Board in Victoria to adopt the ‘education towards compliance’ approach that has been pioneered over recent years in New South Wales. We will have more to say about this, too, but it means in essence that we want to exercise our audit powers in such a way as 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 legal services delivery and 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 unsatisfactory professional conduct or worse in which case we will deal with it, but that is not their primary purpose. Their primary purpose is to encourage and to help legal practitioner directors to improve their management of the provision of legal services by the practice and its supervisory arrangements.

internal (or self assessment) audits

We have agreed to adopt the self-assessment audit process that has been used for some time now in New South Wales and that will be well familiar to many of you. We will 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, and in particular to complete a pro forma self-assessment audit form which asks them to rate their systems against what have become known as the ‘ten commandments’ - to assess how effectively their systems provide for:

- 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 the giving of and monitoring compliance with undertakings
- supervision of the practice and its staff, and
- ensuring compliance with trust account regulations and accounting procedures.

We want and 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 will require them to return the completed self-assessment form to us within a designated period and we will evaluate the information and engage in a conversation with them about what further steps they might take, if any, to fix any perceived weaknesses. We will then work with them or refer them to the Law Society or other advisors to get whatever assistance and support they might require to develop an action plan to achieve that goal and we will ask them in due course to report their progress. We will ask them in any event to conduct periodic 'maintenance audits' to bring us up to date with any changes they initiate themselves, outside that cycle.

Self -assessment audits, in other words, are 'gap analyses' or 'risk assessments' or 'management reviews' that are designed to be a baseline for future improvements to the practice's management systems and supervisory arrangements and reports on future improvements.

We mentioned earlier that we - that is, the Legal Services Commissions of New South Wales and Queensland and soon we hope the Legal Services Board in Victoria – want to achieve a thorough-going consistency of practice and have embarked upon continuing discussions to that end. One of the outcomes is that we have revised and enhanced the pro forma self-assessment audit form that has been used in New South Wales to include a section which requires legal practitioner directors to provide us with further information about their practice including information about its non-legal directors and their occupations, its shareholders and their relationship to the law practice, the number of lawyers it employs, its gross fee income and the services it provides other than legal services, if any.

We will use that 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 our existing complaints data to enable us to develop risk indicators and over time increasingly sophisticated risk analyses which will allow us to identify the kinds of incorporated legal practices most likely to fall short of expectation. Clearly 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.

You can view the form on the Commission's website (www.lsc.qld.gov.au). You will note that the header page includes the Commission's logo and we hope that it will soon also include the logos of our counterpart Commission in New South Wales and of the Legal Services Board in Victoria. That would be a simple but powerful symbol of our intention to ensure a consistency of approach across our three jurisdictions.

external (or review) audits

Clearly we will need to develop and conduct a program of audits ourselves - external or review audits - 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.

What might a program of review audits look like? It's an interesting and relevant question - there is no established practice as yet, unlike with self-assessment audits - and you can think of what follows as a couple of us in Queensland thinking out loud about some possible answers. We have yet to speak to our interstate colleagues so they bear no responsibility if we're off beam.

Let's start by going back to basics. What do we want to achieve? What are the strategic imperatives? How would we measure our success? No doubt there are others but our audit program will have to satisfy at least four criteria, it seems to us, all of them obvious at one level but all of them worthy of close attention:

- firstly, our audit program 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 every few years or so. We shouldn't be in their face, if we can use that expression, but we should be a familiar presence. Similarly we will have to be able to say in relation to quality, surely, 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 need to allow for the fact that we will inevitably have limited resources to conduct and evaluate audits and to prepare the required reports; and
- fourthly, we equally need to allow for the fact that incorporated legal practices will have their resource constraints, too, and that they will be also be time poor. We should not add unnecessarily to their compliance costs.

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 all aspects of every incorporated legal practice's management systems and supervisory arrangements – we don't and won't ever have the resources we need to do that.

It follows immediately that we envisage ourselves conducting comprehensive audits only occasionally, and only of those incorporated legal practices we believe are most likely to fall short of expectation, and that most what we do will be much more narrowly focussed on those particular aspects of a practice's systems we believe are most likely to fall short of expectation – hence our need to rapidly acquire the data and the skills and the analytical capacity we will require to make evidence based risk assessments of those kinds.

We are mindful however of a potential downside to an overemphasis on risk assessment. We need to maintain a credible presence even among those practices we assess to be least at risk because we might get our risk assessment wrong, for one thing, and because of the possibility we might encourage legal practitioner directors in low risk practices to drop the ball by too often directing our attention elsewhere. We need to have a presence with them as well.

We are comfortable with the idea that most and in all likelihood the vast majority of external audits will be less than comprehensive. That is because it is not our job to verify much less certify or guarantee or 'sign off' that legal practitioner directors and the incorporated legal practices they are directing are meeting their obligations under statute – that is their responsibility. Ours is a more modest job – to audit their compliance systems, not their compliance performance.

How then within our limited capacity can we best add value? It's instructive to go back to basics once again.

We could take aspects of a practice's management systems and supervisory arrangements and review its policy manuals and guidelines and the like to check that they include all the characteristics of best practice systems of that kind – but why would we do that? Why would we 'tick and flick' by reference to the documentary evidence only? We could check that the practice had identified specific risks that are most likely to lead to compliance failures or ethical lapses or for that matter simple mistakes and that it had developed procedures to mitigate those risks and trained its employees about what's expected of them – but why would we do that?

The point, surely, is whether the policies and procedures are working and whether the training is effective - whether the people who are providing legal services are doing the right thing in practice. We might well want to cast our auditor's eye over a practice's systems and processes and staff training and development programs but surely we should be looking at their outcomes too, and even giving them priority.

We all know of 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 of organisations that have 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 want of confidence they won't be victimised. And we all know about Enron and the triumph of form over substance that happened there.

We see no reason not to take the same approach to an incorporated legal practice's 'appropriate management systems' – the main game as we see it is all about outcomes, and ultimately about 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 your firm's culture.'^v

The lesson, surely, is that we can best add value by directing our external audit program to collecting evidence about how the management systems that the Act requires legal practitioner directors to 'keep and implement' actually work themselves out in practice.

Indeed the Act defines 'appropriate management systems' in terms of outcomes - they are systems that 'enable the provision of legal services by the practice under the professional obligations of Australian legal practitioners... and so that the obligations of the legal practitioners who are officers and employees of the practice are not affected by other officers or employees of the practice'^{vi} - and that's where we should be directing our attention.

compliance audits in other regulatory contexts

We have drawn on and taken heart from Dr Christine Parker's work in getting our thinking to where it is and in particular 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). It is worth quoting her findings at some length.^{vii}

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' and noted that most of the audits she studied 'relied primarily on documentation of the system and, secondly, discussions with senior management.' She observed that 'there is no inspection, let alone testing of the processes in action. The audit reports often described and 'assessed' training programs with no evidence cited as to what staff actually learned from those training programs, whether their behaviour had changed or their knowledge level had improved... Most of these desk audits are really only capable of providing a view about the

intended *design* of the compliance program... the methodologies were not rigorous enough to discover how compliance programs are actually *implemented* [or] what *outcomes* they are achieving.’

We hasten to add that we understand both the ACCC and ASIC have since responded to Dr Parker’s criticisms and adjusted their methodologies accordingly.

Be that as it may, Dr Parker concluded that ‘an effective auditor would conduct more systematic fieldwork to find out what actually happens where it counts – that is, how compliance programs are implemented and understood by line management and line staff. They would test the limits of management systems and see what happened. They might arrange for a product that does not meet safety standards to be placed in a trader’s inventory to test whether anyone notices or for a fake customer complaint to be made to see how seriously it is investigated. They will ‘mystery shop’ to see how sales agents actually represent the company’s product to the customer. They will ask employees to explain in their own words how they understand compliance procedures or what they learnt from a training session. They would track through processes by looking at documentation and talking to staff at each stage of the process about what actually happens... They might conduct focus groups or anonymous surveys... They might review a sample of financial transactions, customer records or computer files. They would even talk to customers about their experience with the firm... In other words they would be proactive in checking how self-regulation was implemented.’

Crucially to our mind she argued that ‘auditors should assume at every stage of evaluation that there will be problems, things that have been missed, things that can be improved and things that should be changed because internal or external circumstances have changed... It should go out of its way to look for problems and to include the views of relevant stakeholders who are likely to be critical of the company’s handling of compliance issues. The assumption is that if evaluations do not find breaches and problems (and lead to their correction and improvement) then there is something wrong with the evaluation process.’

She adds ‘this does not mean that [audits] must be aggressively adversarial’ and, consistent with what we have described as our ‘education towards compliance’ approach, that audits should always be a platform for discussion and implementation of changes to the company’s compliance program.

We are attracted to the view that we as regulators should go out of our way to look for problems and can see nothing inherently adversarial about such an approach - problems drive solutions, and solutions drive improvements.^{viii} And the simple fact is that we are well placed as independent regulators to value add in this way and certainly better placed than the legal practitioner directors of the practices we are auditing – the more we have succeeded through the self assessment process to engage them with reviewing and continually improving their management systems, the more they will have invested in them and the less they will be inclined to go looking for anomalies or otherwise to find fault with them. That is human nature. They will be attached to their systems in ways that we aren't and so the role falls to us.

We note as an aside the evidence to the effect that 75% of the boards of companies that publish codes of conduct for the staff believe they have a responsibility to monitor compliance with their codes but that only 16% of them actually do it.^{ix}

some possible auditing strategies

Dr Parker has suggested some strategies in the context of corporate regulation more broadly that seem to us to have merit in our context also, ranging from 'mystery shopping' through fake complaints and focus groups and anonymous surveys of both employees and clients to reviewing sample client files - we could review a sample of the accounts that a practice has sent its clients, for example, to test its billing practices.

Mystery or 'shadow' shopping as it is sometimes known involves real or pretend consumers visiting selected service providers and behaving exactly as a genuine client might behave and reporting their experience. It's a familiar strategy in the context of testing the quality of customer service provided by retailers, for example, but it can just as readily be used to test the quality of professional advice also including legal advice. ASIC have used mystery shoppers to test the quality of financial planning and superannuation advice, for example,^x and legal academics 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 specialist areas.^{xi} We might well be able to mimic and adapt auditing strategies of these kinds.

On another tangent altogether we have already developed and road-tested an on-line survey instrument we hope will give law firms a way to test their 'ethical health' by exploring some typically unspoken and unexamined dimensions of their organisational life. We sought and got agreement from five law firms to trial the survey - three large and two mid-sized firms –

and they gave us very positive feedback. Four of the five firms pressed us to see their results and had begun strategising even before we provided them with their results (including how their firm's results compared with the de-identified and aggregated results from all five firms) how they might use them in continuing legal education and other strategic planning forums with their staff.

The survey had its origins in research findings to the effect that organisations have a stronger ethical culture if their staff respond affirmatively to questions like the following but are vulnerable if they respond negatively: do employees feel a sense of responsibility and accountability for their actions?; do they freely raise issues and concerns with their supervisors without fear of retaliation?; do managers model the behaviour they demand of their employees; do managers communicate the importance of integrity when making difficult decisions?

So we decided to ask - we designed a confidential on line survey using an off the shelf survey software program that can be programmed to automatically calculate the results and we asked a set of mirror image questions of these kinds of the partners and employed solicitors at each of the five firms and we compared their answers, both within and across firms.

We are improving the questionnaire to incorporate the very helpful feedback we received from the firms who road-tested it for us but we note that it satisfied even in its first draft form all four criteria we mentioned earlier in the paper- it was seen to be a credible and meaningful tool; it was fully consistent with an 'education towards compliance' framework; it was not a labour intensive exercise from our point of view but simply utilised readily available software; and it didn't involve any significant compliance costs from the law firm's point of view either - it took the partners and employees who participated less than half an hour to complete the survey.

You can view the survey in its original and yet to be refined version on the projects and research page on the Commission's website (www.lsc.qld.gov.au) under the heading *best practice project*. It is our intention unless we are talked out of it to use the revised survey as one means of conducting external audits.

Obviously we have a lot of work to do designing further audit strategies but we are saying that we should be setting our sights in the main on 'the measurement of impacts within small, specific and well defined problem areas', that we should give ourselves 'the latitude to solve

problems in a responsive, flexible way’, and that this approach will involve the ‘identification of the patterns or risks of non-compliance, an emphasis on risk assessment in allocating resources, and developing an organisational culture that allows the regulator to develop creative ‘tailor made’ solutions to procure compliance, while recognising the need to retain enforcement as the ultimate threat.’^{xii}

IN CONCLUSION

We note, finally, that the regulatory framework that applies to incorporated legal practices might usefully be extended to all law practices, whatever their business structure. It already does in New South Wales, but not in Queensland.

We can see no ‘in principle’ reason why traditionally structured law practices should be subject to less rigorous regulatory supervision than incorporated legal practices. Lawyers have always sold legal services for profit within a business enterprise, whatever its structure, and have always had to balance their commercial obligations to their business enterprise with their professional obligations to their clients and to the courts. There is no particular reason to think that lawyers who practice in incorporated legal practices will find it harder to balance their responsibilities than lawyers who practice within a traditional partnership arrangement.

On the other hand and more to the point we can see good practical reasons why traditionally structured practices might usefully be subject to the more proactive regulatory framework that applies to incorporated legal practices. We often find ourselves dealing with complaints and investigation matters which see consumers get less than a good or a fair deal not because the respondent lawyers are less than competent or diligent in their practice of law as such but because their law practice doesn’t keep and implement appropriate management systems which support and assist them to deliver legal services to expectation.

The current disciplinary framework makes it difficult to give consumers redress in those circumstances or to promote and enforce better standards of service delivery. We have no capacity to deal with law practices as such, only individual lawyers, and our only avenue is to explore whether the managing or supervising partner can be held to account for a ‘failure to supervise’. That is a notoriously hard charge to make stick and in any event discipline is a blunt instrument not well suited to securing improvements to a practice’s management arrangements.

Endnotes

ⁱ see, for example, *Legal Profession Act 2007* (Qld) sections 117-129 and 574, and (for the definition of ‘disqualified persons’), Schedule 2-Definitions

ⁱⁱ section 130

ⁱⁱⁱ section 130(3)

^{iv} sections 131 and 540-581

^v Lori A Richards, Director, Office of Compliance Inspection and Examinations, US Securities and Exchange Commission, quoted in *Is your culture a risk factor? Using culture risk assessments to measure the effectiveness of ethics and compliance programs*, David Gebler, Working Values Ltd, 2005

^{vi} section 117(3)

^{vii} Dr Parker has researched, published several books and numerous articles and taught on regulatory enforcement, business compliance and ethics, and lawyer’s ethics and regulation for more than ten years. We quote here from her article *Regulator-required corporate compliance program audits* that she presented at the workshop *Auditing in Perspective: Regulatory Tool, Moribund Remedy or Democratic Champion*, 6 February 2003, Regulatory Institutions Network and National Institute for Government and Law, ANU, Canberra. The article has since been published in the journal *Law and Policy*, Vol. 25, No.3, July 2003.

^{viii} we are reminded of Karl Popper’s ‘falsificationist’ philosophy of science of the 1950’s and 1960’s. Philosophy of science has moved on but Popper’s fundamental insight remains invaluable – that the best way for a scientist to test a hypothesis that purports to explain some naturally recurring phenomenon is to set out to try not to prove it to be true but to exclude the possibility that it is false. That’s because no amount of evidence that tends to confirm the hypothesis can actually prove it to be true, only that it is consistent with the totality of the evidence that has been unearthed to date, but a single counter-example proves it to be false. So - we can be more confident of a hypothesis the more we try to prove it to be false and fail than we can if we go looking for corroboration and succeed. Trying to prove a scientist’s hypothesis to be false is not to be ‘aggressively adversarial’, merely fruitful in the search for knowledge.

We are also reminded of the pedagogic maxim that applies in education circles, and special education circles in particular – that if students aren’t learning very effectively then their teachers aren’t teaching very effectively and should try another way. That is not ‘aggressively adversarial’ to teachers, merely fruitful in achieving learning outcomes.

^{ix} KPMG, *A view from the top - business ethics and leadership*, www.kpmg.com.au/aci/docs/rassas_view-from-the-top200510.pdf

^x see ASIC Report 18, Survey on the quality of financial planning advice, February 2003, for example, and Report 69, Shadow shopping survey on superannuation advice, April 2006.

^{xi} see Richard Moorhead and Avrom Sherr, An anatomy of access : evaluating entry, initial advice and signposting using model clients, 2002, <http://www.lsrc.org.uk/publications/modelclientpaper.pdf>

^{xii} ALRC Discussion Paper 65: Securing Compliance – Civil and Administrative Penalties in Australian Federal Regulation, paras 4.100-4.103 at pp.137-138.