...lawyers are likely to face continuing change, consistent pressures for the better delivery of legal services and the reasonable criticism that their service should be available for the entire population of Australia. Heraclitus held that everything was in flux. It is preferable to respond positively to such pressures for reform rather than standing, like King Canute, commanding the tide to go back.\(^1\)

\(^1\) Shaw, Jeff QC, “Former Attorney General reflects on the practice of law in the new century”, *NSW Law Society Journal*, Volume 38 No 11, December 2000, p72
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MESSAGE FROM THE PRESIDENT

The Law Council resolved in 1999 to establish a Taskforce to examine some of the issues likely to impact on the legal profession in the first decade of the 21st century. The Council had in mind a document that would survey the landscape across a range of subject areas and report back to the profession.

The resulting paper, 2010: A Discussion Paper - Some Issues Affecting the Legal Profession explores issues and challenges in a number of key areas - educating the profession, issues of work/life balance and retention of employees, the impact of technology and increasing commoditisation of legal services, the role and structure of the legal professional bodies.

The Council resolved not to make recommendations for action arising from the Discussion Paper. Rather, my own view is that the Discussion Paper should be used as a tool to generate debate within the profession and the community about the role of lawyers and the implications arising from some of the identified issues.

Of course there is much more that could be written and said in the context of challenges for the profession in the current decade. It is quite likely that some of those challenges have not yet been identified or articulated. Nonetheless I am satisfied that there is plenty of material to start the debate. In due course there will be actions taken as a result - within law firms, at the Bar, within the legal professional bodies, and in particular within Law Council. What we will see is an agenda to address those areas that lend themselves to the development of a policy response.

The Law Council welcomes feedback and comments on the issues raised in the Discussion Paper. Comments can be posted to the Law Council 2010 Taskforce at GPO Box 1989 Canberra ACT 2601, or emailed to 2010@lawcouncil.asn.au.

Anne Trimmer
President
September 2001
EXECUTIVE SUMMARY

PROFILE OF THE LEGAL PROFESSION (Chapter 2)
A lawyer is an officer of the court and performs an essential role in the administration of justice. Lawyers’ obligations are of a different nature to those of other professionals and derive directly from the rule of law and the requirements of a properly functioning judicial system in a constitutional democracy. Special consumer protections include trust accounting, access to fidelity funds, complaint procedures, compulsory professional indemnity insurance.

Legal practitioners are free to choose among a range of existing and evolving forms of business structure. Traditional forms of legal practice have been as a sole practitioner (as either a barrister or solicitor) or in a partnership of solicitors; however, new forms of business structure such as incorporation and multidisciplinary practices are slowly becoming available.

While Chapter 2 provides a range of statistics, there are no definitive statistics on the legal profession in Australia. The Taskforce intended to develop a national statistical “snapshot” of the legal profession today to provide a basis for developing ideas about where the profession may be headed. Statistics were incomplete in some areas, and cannot be said to produce a comprehensive picture. Problems included:

- The Law Council’s membership statistics only include practitioners who are members of Law Council constituent bodies.
- Each constituent body has its own membership categories and applies its own definitions to these categories.
- The Australian Bureau of Statistics survey excludes corporate counsel and those working in other organisations employing lawyers, including accountancy firms, banks and government departments and agencies whose core business is not the provision of legal services.
- Only two constituent bodies conduct regular, annual member surveys, making national statistics unavailable on a range of issues.
- In relation to law students, the course descriptions used by the Commonwealth Government for differentiating law and legal studies do not reflect a split between the professional course and other courses, and universities self select which category students are placed in.

CHALLENGES FOR PROFESSIONAL BODIES
- The lack of consistency of definitions in constituent body membership categories.
- The inappropriate classification of law and legal studies courses by the Commonwealth Department of Education, leading to the unavailability of reliable statistics about law students.
- The lack of any available national information about the demographics of the legal profession, including ethnicity, Aboriginal or Torres Strait Islander descent, income and location (rural/suburban/city).
THE WORLD IN 2010 (Chapter 3)
Changes that take place in legal practice will be shaped by changes to the environment in which law is practised. The 21st century promises to be a time of significant change, driven by five key factors:

- Advances in information technology;
- The effects of globalisation;
- Changes in the competition and government regulation;
- Changes in demographics and social attitudes; and
- Advances in science.

Chapter Three examines each of these drivers in turn, firstly by looking at how they may change the world generally, and then turning to the possible effects on the law and legal practice. Some of the key possible changes include:

- The internationalisation of legal practice at the “top end” of commercial transactions, with a small number of large multinational firms handling major commercial transactions world wide.
- The “commodification” of law that is essentially transactional, and increased competition from non legal providers.
- Increased individual consumer awareness of legal rights, leading to better educated legal consumers with higher expectations. Increased awareness will also assist access to the 'latent legal market'.
- Deregulation of markets leading to increased competition from overseas and from non traditional providers of legal services.
- Increased difficulty in access to courts for lower and middle class consumers as legal aid budgets shrink and direct court funding decreases and/or is linked to performance standards. A possible increase in 'user pays' approaches to access to courts and greater public expectations of pro bono services from the profession.
- An ongoing tension between business and professional aspects of legal practice, with focus on adequacy of existing ethical rules.

CHALLENGES FOR INDIVIDUAL PRACTITIONERS AND FIRMS

Potential Growth Areas of Practice
- Ecommerce, cyberlaw and related fields.
- All aspects of international commerce, including trade law, mergers and acquisitions, taxation and capital financing.
- Intellectual Property: both defending old rights and creating new ones.
- Biotechnology and other science and technology related legal work.
- Dispute avoidance and risk management.
- A range of human rights issues, such as refugee law, gender discrimination and privacy.
- Work in the Asian market.

Potential Declining Areas of Practice
- More routine aspects of law are likely to be commoditised. Transactional legal services will be provided in standardised forms electronically both by the legal profession and non lawyers. The profitability of transactional law is likely to decline.
- Legal aid funding is unlikely to be significantly increased, leading to ongoing pressure on practitioners who work with clients who fail to meet legal aid guidelines, or who need more assistance than can be funded via legal aid.
Potential Changes to Ways of Practice

- Ensure that the focus of legal practice is on the needs of clients and on providing a value added service.
- Consider billing practices based on value, not hours.
- Consider how to use technology to free up time, including using changes to the role of paralegals and legal secretaries. Develop websites that go beyond a digital brochure. Consider developing ‘4th generation’ websites and extranets for individual clients.
- Consider the effects of the convergence of services, particularly in the business advice area.
- Consider options for specialisation and niche marketing, along with the development of formal and informal networks, both nationally and internationally.

CHALLENGES FOR PROFESSIONAL BODIES

- Working to free up market access, especially in Asia.
- Ethics - and how to ensure ethical principles are applicable to lawyers in all employment situations.
- To obtain sufficient funding from governments to allow the justice system to work adequately and fairly for the financially and socially disadvantaged.
- To facilitate the delivery and recognition of pro bono services provided by the profession.
- Looking for ways to improve the public image of the legal profession.
- Assisting in development of digital signatures and public key infrastructure.

EDUCATING THE PROFESSION FOR THE FUTURE (Chapter 4)

Legal education in Australia has undergone a period of unprecedented growth and change against a backdrop of significant cuts in Commonwealth funding of higher education.

Government policies on education introduced throughout the late 1980s and 1990s sought to align the higher education sector with broader economic aims and to move universities to more of a market footing. The Relative Funding Model introduced in 1991 placed ‘Law and Legal Studies’ in the lowest funding cluster. Law schools were seen as cheap to fund compared with other faculties within the university while demand from students for law school places was high and still continues to exceed supply. Law became a disproportionately popular course with universities in need of additional funds, creating a blow out in the number of universities offering law (from eight to twenty nine) and a consequent increase in the number of students graduating with law degrees.

Universities have adopted a range of new approaches to funding, including increased reliance on full fee paying and overseas students in undergraduate and post graduate courses. Students affected by the user pays system have increased expectations, and at the same time have expressed concerns about issues such as class sizes, resources, the standards of teaching and the range of courses on offer.

Significant changes have also taken place in practical legal training (PLT), with a proliferation of courses of varying duration and cost. The latest developments have been the introduction of in house PLT by big firms, and the integration of PLT into undergraduate courses at several universities.

While national standards have been developed for such issues as undergraduate and practical legal courses, there remains no single body responsible for monitoring adherence to these standards. The proliferation of courses makes this an important issue for the future.
CHALLENGES FOR PROFESSIONAL BODIES

**Funding**
- Monitor the effect of combining professional law and legal studies courses for Commonwealth funding purposes.
- Monitor the effect of fees on the demographics of law graduates and admissions to practise.
- Monitor the effect of restricted Commonwealth funding and full fee paying students on academic standards.

**National Standards**
- Continue lobbying for the creation of a national body to develop and monitor uniform national standards relating to:
  - Core undergraduate subjects;
  - Practical legal training; and
  - Uniform national admission standards.

**Practical Legal Training**
- Monitor the effect of the integration of PLT into undergraduate courses, and the level of involvement of practitioners.
- Consider the impact of the development of in house PLT in large firms.

**Continuing Legal Education**
- Consider the effectiveness of voluntary CLE.
- Monitor the quality and range of CLE available.
- Monitor the accessibility of CLE for suburban and rural practitioners.
- Consider the future level of involvement of the profession in the provision of CLE.

**Ethics**
- Consider methods for integrating ethics into undergraduate programs, including the involvement of practitioners.

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**DOING BUSINESS IN THE FUTURE (Chapter 5)**

The title of this Chapter embodies what is likely to be one of the key issues facing the legal profession over the next ten years: the ongoing tension between commercial and professional aspects of legal practice. This tension is likely to be heightened by a number of factors, including:

- Increased individual consumer awareness of legal rights, leading to better educated legal consumers with higher expectations;
- Increased competition from overseas;
- Increased competition from outside the legal profession;
- Changes within the profession itself, as it diversifies the range of services offered to meet the above competitive pressures.

A number of trends point towards an increasing polarisation of the profession into two tiers of solicitors: one dealing predominantly with business and commercial issues, the other with the traditional role of personal legal assistance. The increasing range of businesses employing qualified lawyers is also contributing to a further fragmentation of the profession.

The legal profession’s code of ethics underpins everything lawyers do and a commitment to these principles is the main thing that connects the varied segments of the legal profession together. This fact makes ethics one of the most important issues facing the profession over the next decade.
## CHALLENGES FOR INDIVIDUAL PRACTITIONERS AND FIRMS

### Barristers
- The extent to which practitioners can balance general and specialist skills, or how they may develop specialised areas of practice while retaining sufficient connections with the wider Bar and other practitioners.
- The need to adapt to changes to legal business structures, while preserving the collegiate foundation that sustains the independent Bar’s professional ethical values.
- The possible modification or abolition of advocate’s immunity.
- Finding methods to assist barristers with parenting responsibilities.

### Small Firms
- Use of technology to assist productivity and provide 'commoditised' legal services.
- Examination of niche markets and specialisation.
- Attracting new clients through alliances and new business structures.

### Mid Size Firms
- Consideration of options such as mergers or nationalisation.
- Development of networks and alliances.
- Consideration of niche marketing and specialisation.

### Large Firms
- Consideration of nationalisation (where this has not yet occurred) and incorporation.
- Possible mergers/collaborations with either large foreign law firms or a 'big five' accounting firm.
- Consideration of providing a wider range of business related services.
- Expansion into overseas markets.

### Corporate Counsel
- Acquiring greater understanding of business issues.
- Managing relationships with private law firms.

## CHALLENGES FOR PROFESSIONAL BODIES

### Policies
- Developing policies to ensure that the fundamental values of the profession are not affected by new business structures such as Incorporation.
- Further development of MDP Policy to ensure no diminishing of ethical or professional standards.
- Further development of ethical standards.

### Management
- Study the implications of outsourcing of core functions by law firms.

### Assistance to Practitioners
- Strategies to assist part time practice at Bar.
- Strategies/services to assist small practices.
- Continue lobbying/liaison with overseas professional associations to improve access to foreign legal markets.

### Representing the Profession
- Strategies to ensure that those working outside traditional professional structures are adequately represented by constituent bodies, and remain part of the legal profession.
THE 21ST CENTURY WORKPLACE (Chapter 6)

The legal workplace of the 21st century will almost certainly be different from the style that predominated in the 20th century, largely due to changes to the expectations and aspirations of legal practitioners themselves. The expectations of women (who continue to constitute the majority of graduates from law schools) and 'Generation X' include factors such as an appropriate work-life balance and a preference for recognition, variety and challenge over money.

The 20th century law firm by no means met such expectations. It was seemingly characterised by long hours, slow promotion rates, a formal structure and a focus on billable hours.

This contrast between expectations and outcomes is exhibited in the relatively high rate of dissatisfaction among legal practitioners and the increased mobility of members of the profession. Mobility has been aided by the expanding range of options, including:

- job opportunities overseas, particularly in London, where salaries are considerably higher;
- working as corporate counsel for a range of firms, including dotcoms;
- working for accountancy firms or other firms providing financial/business services;
- using technology to facilitate sole practice.

Legal practitioners nearing the end of their careers also face difficulties in adjusting, particularly after a career of long hours and little time for outside interests.

### CHALLENGES FOR FIRMS

- Developing human resources policies reflecting an appropriate work-life balance for staff at all stages of their careers, issues such as expanded leave categories, flexible part time work policies and telecommuting.
- Developing a range of alternative career paths.
- Ensuring partners have appropriate leadership and mentoring skills.
- Ensuring all staff have career development opportunities, access to training opportunities and variety of work.

### CHALLENGES FOR PROFESSIONAL BODIES

- Developing minimum standards or benchmarks for employment related issues such as hours of work; telecommuting.
- The unavailability of demographic information such as ethnicity and Aboriginal or Torres Strait Islander descent.
- Assistance to small firms with human resource issues, including developing small firm interchange programs and assisting small firms with recruitment.
REGULATING THE PROFESSION FOR THE FUTURE (Chapter 7)

Self-regulation of the legal profession has long since disappeared in Australia in favour of approaches that involve the Government, the profession and the Courts in regulatory activities over lawyers. However, despite the fact that national regulation is giving way to international standards, the Australian legal profession continues to be regulated on a State and Territory basis.

In 1994 the Law Council developed the *Blueprint for a National Legal Services Market*. The fundamental policy basis of the Blueprint is that a lawyer admitted to practise in any State or Territory should be able to practise law throughout Australia with few restrictions.

Despite such moves towards harmonisation, the regulatory structures in the States do not share much in common. Each jurisdiction has a unique approach which creates a series of obstacles to practising law in jurisdictions other than a lawyer's home State and which also makes moves towards a uniform or national approach to the regulation of lawyers more complicated. There are regulatory discrepancies between the States and Territories as to:

- the decision making processes concerning who should be admitted to practise law;
- the ethical standards lawyers should maintain;
- what disciplinary proceedings should be taken against lawyers who do not uphold these standards;
- what content – and how – law students should be taught; and
- what controls and requirements should be placed on fidelity funds and trust accounts.

### CHALLENGES FOR PROFESSIONAL BODIES

#### National Regulation

- Develop an agreed position on a national standards setting body.
- Develop proposals for uniform standards for:
  - admission;
  - minimum cover and terms of professional indemnity insurance;
  - trust account requirements; and
  - professional standards schemes.
- Consider developing a proposal for fidelity insurance with national cover and uniform terms and conditions.
- Consider the implications and practicalities of developing a national register of legal practitioners.

#### Law Council Role

- Develop a national strategy to improve the public image of lawyers.
- Consider changes to the format of *Australian Lawyer*.
I have a great interest in the future, because I intend to spend the rest of my life there.  

1.1 WHY 2010?

In late 1998, representatives from the Executives of the Law Council Sections recommended that the Law Council undertake a long term strategic planning exercise for the legal profession. As a result of this suggestion, the Law Council established a Taskforce, under the Chairmanship of the President Anne Trimmer (then President Elect) as part of its 1999-2000 Business Plan. The Taskforce was asked to submit a draft Report to Council in December 2000.

The central issues for the 2010 Project were to:

- identify what sort of environment the legal profession would be facing in the 21st century;
- examine the threats and opportunities which this environment would create; and
- determine how the profession and the Law Council could prepare for this environment.

Future gazing is, of course, not uncommon: most organisations regularly think about the future as part of their business planning process. The most common method is the 'Vision Statement', which sets out an organisation’s preferred future. It is recognised that vision statements may sometimes contain ambitions that are more idealistic than practical. The Law Council considers that it is important, nonetheless, to identify the ideals that lawyers should set for themselves for the future progress of the legal profession. At Section 7.3 of the Discussion Paper, for example, the essential values and function of a legal practitioner are discussed.

In this context, one of the key issues that must be addressed is the ‘paradox of change’. While the profession needs to address and come to terms with all the issues that arise from the forces of deregulation, competition, globalisation and technology, there is equally a need on the other side of the policy equation to emphasise the core values of the legal profession. This is not only because they go to the essence of being a lawyer, but also because adherence to these core values may provide lawyers with a competitive edge against other service providers.

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2 Albert Einstein
1.2 **THE TASKFORCE PROCESS**

The process of developing the ideas contained in this Discussion Paper has been lengthy. The first Taskforce meeting took place in October 1999, and the Taskforce met regularly both by teleconference and in person over the next twelve months. Research was undertaken by the Law Council Secretariat, and the Taskforce acknowledges the work of Joanna Mullins, Margery Nicoll and Nancy Griffiths in conducting research and preparing the initial draft of this Discussion Paper.

The Taskforce decided that the first step to developing ideas about the future of the legal profession was to examine the present position of the profession. This task proved more difficult than anticipated, and the preliminary examination of available statistics revealed significant gaps, anomalies and inconsistencies. Rather than the sought after “snapshot” of the profession, the statistics available present more of a “sketch”.

The next task was to develop a vision of what the world might look like in 2010. This involved examining trends and issues external to the legal profession to try and determine what sort of environment the profession would be facing in 2010. In the first instance, an extensive literature search and analysis was conducted. This included information from both Australia and overseas and involved searching journals, newspapers and, most importantly, the Internet.

This search for issues and ideas has been ongoing over the period during which the Discussion Paper has been in development, and relevant Websites, journals and newspapers have been checked on a daily basis for new information, issues and case studies. An extensive bibliography cataloguing the Taskforce’s research can be found in Appendix B.

Comparable overseas organisations such as the American Bar Association and Canadian Bar Association proved a useful source of information. These bodies have already carried out extensive research into the future of the legal profession in their own countries. The American Bar Association has two websites of particular relevance, the *Seize the Future* site and the *Elawyering* site. These sites were useful both for their content and for the “leads” they provided to other information. At the Taskforce’s request, the American Bar Association forwarded it a range of other material at the beginning of the project. Similarly, the Canadian Bar Association Young Lawyers’ Committee published a report on the future of the law in August 2000 that provided additional material.

The Discussion Paper’s conclusions and discussions are based on the issues raised by this research. Nevertheless, the Law Council ‘family’ has also provided much assistance for this project. The Taskforce wrote to Law Council Members and Presidents and Chief Executive Officers of law societies and bar associations asking them to name the three key issues facing the profession over the next 10 years. The Law Council’s Alternative Dispute Resolution Committee, Young Lawyers’

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3 [http://www.futurelaw.com](http://www.futurelaw.com) and [http://www.abanet.org/elawyering](http://www.abanet.org/elawyering). Information contained on the Seize the Future site has now been incorporated into the Law Practice Management Section site: [http://www.abanet.org/lpm](http://www.abanet.org/lpm)

Committee, Equalising Opportunities in the Law Committee and General Practice Section also provided additional assistance and input.

Anne Trimmer, President of Law Council, Peter Levy, Secretary General, and Margery Nicoll, Director, Legal and Policy, also interviewed a range of key senior practitioners. Individuals of varying background and experience were contacted, including senior and junior barristers, members of the judiciary, academics, regulators of the profession, corporate counsel and practitioners working in a range of small, medium and large firms. In the first instance, interviewees were provided the following questions prior to meetings:

- What are the 3 most significant changes in the legal profession or legal landscape that you see over the next 10-20 years and how will they affect legal practice?
- How will social and economic changes affect the structures within which lawyers do business?
- Are your expectations of a first year graduate barrister or solicitor currently being met?

Discussions during the first round of meetings led to the inclusion of an additional question:

- What changes (if any) do you consider need to be made to the current content and structure of academic legal training programs to ensure new law graduates will be in a position to meet the challenges of legal practice in the 21st century?

The purpose of these interviews was not to provide quantitative results. Interviewees were therefore not chosen through a statistical sampling process. The purpose of the interviews was primarily to test the validity of the tentative conclusions and issues raised by the Taskforce’s research in the ‘real world’. Interviewees were chosen from a range of backgrounds, and because they were members of the profession who were known to have views on a variety of issues. In this context, the interviewees’ comments add a personal and local dimension to the Discussion Paper. The views expressed are not intended to be representative of the views of the majority of practitioners. However, interviewees were amongst the leaders of the profession and their comments draw on many years of experience in varying practice areas. A list acknowledging all those who assisted the Taskforce, including interviewees and those who provided written comments or other materials is included at Appendix A.

A draft Discussion Paper was prepared within the Secretariat and initially checked by an editorial committee. The draft was then distributed to the Taskforce for final comments and suggestions to be incorporated before the draft Discussion Paper was submitted to the Law Council. The draft Discussion Paper was presented to Council in December 2000. The law societies and bar associations were then given two months to consider the Discussion Paper and bring forward comments and suggested amendments.

Following this process the Discussion Paper was amended and a further draft was provided to the Council in March 2001. Council determined to allow members until the end of April for further comments, with a view to distributing the Discussion Paper in early June. In June the period for comments was further extended to allow the Bars the opportunity to make further comments. This Discussion Paper is the result.
1.3 Structure of Discussion Paper

Chapter 2 presents the basic statistics providing a ‘sketch’ of the legal profession today. It includes demographic information about practitioners as well as information about legal practice and the legal services industry as a whole.

Chapter 3 draws on the interviews and research to identify five key drivers of change that will shape the future. Each section describes the trend, the threats and opportunities this poses and then discusses how the trend is likely to affect the legal profession. The Chapter concludes by drawing together the various trends and sketching a broad picture of the key issues the legal profession may be confronting in 2010.

Chapters 4 to 7 further develop particular issues outlined in Chapter 3 by identifying the opportunities and challenges in four specific areas of relevance to the profession:

- legal education;
- business structures and business practices;
- workplace issues; and
- the regulation of the legal profession.

Several Chapters of the Discussion Paper include case studies of innovative practices. While these describe changes and new service delivery methods which are emerging now, they are included because they represent the “cutting edge”, and are therefore a glimpse of how the profession may change over the next ten years.
1.4 **WHERE TO FROM HERE?**

...future studies is not (and should neither pretend to be nor strive to become) a predictive science. Rather, future studies...is a participative process by which people learn to widen their horizons by seeing the futures as being multiple, alternative and subject to human creative invention, rather than singular, inevitable and predictable.

This Discussion Paper presents Council with a range of opinions on what the future might hold and also presents options and case studies examining how firms and practitioners are changing their work practices now to prepare for the future.

Initially, the Taskforce had considered developing a series of recommendations. In reviewing the draft Discussion Paper, it became apparent that the task of preparing recommendations on such a wide range of issues should involve input from a wide range of lawyers. It was felt that it would be presumptuous for the Taskforce to put its recommendations forward without consultation and consideration of the issues by a wider group of the profession.

Instead, the end of each Chapter of the Discussion Paper identifies a series of challenges that need to be addressed by individual practitioner, firms and the profession as whole.

The Taskforce suggested to Council that identified Law Council committees should be requested to assist with the development of some recommendations and that specific committees should be established to deal with others. Some areas identified within the Discussion Paper lend themselves to further debate that could be developed by such committees. Law Council members will be discussing what further work should be done by the Law Council at its meeting in October 2001.

There are also issues that must be more directly addressed by practitioners and firms at the coal face of legal practice. It is hoped that this Discussion Paper can assist in fostering healthy debate and discussion about the future direction of the legal profession.

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CHAPTER TWO: PROFILE OF THE LEGAL PROFESSION

Those who cannot remember the past are condemned to repeat it.

2.1 OVERVIEW OF THE LEGAL PROFESSION IN AUSTRALIA

The services that each of you do and will perform, both directly and with respect to economic transactions and also indirectly with respect to the maintenance of freedoms and the maintenance of a sense of fairness in our society, are an absolutely vital contribution to the economic, as to the social, welfare of our nation. There is no job more important in terms of economic importance than a legal job.

The essence of the Australian Constitution is the division of powers and functions between the states/territories and the Commonwealth. The legal profession is regulated under State and Territory legislation. Legal practitioners are admitted in State and Territory Supreme Courts. The State based regulatory system in relation to the legal profession is complex.

This Chapter provides a brief description key features of the regulation of the legal profession.

A The Legal Practitioner as an Officer of the Court

As the servants of a system which seeks to administer justice within society, the lawyer is subject to ethical requirements which go beyond those imposed on any other citizen under general law. This covers matters such as integrity, independence, confidentiality and dignity.

A lawyer is an officer of the court and performs an essential role in the administration of justice. While in all jurisdictions statutory bodies and/or professional associations play an important role in regulating the legal profession, ultimately it is the role of the Supreme Court to define and maintain the standards required of the profession.

The status of legal practitioners as a “co-minister of justice” is complemented and supported by strict ethical requirements imposed on each lawyer. While all professionals are subject to a range of fiduciary, professional and ethical duties to their clients, the status and role of the profession is recognised through the existence of legal professional privilege. Only legal practitioners are afforded the right to refuse (on a client’s behalf) the production of material to a court on the grounds that the communication is privileged.

Lawyers’ obligations are of a different nature to those of other professionals. Those obligations derive directly from the rule of law and the requirements of a properly functioning judicial system in a constitutional democracy. The provision of legal

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6 George Santayana (1863-1952) US philosopher, author, educator, poet  
7 Spigelman CJ, Hon JJ, College of Law Graduation Ceremony Occasional Address, 8 November 2000  
8 Further discussion of regulatory issues can be found in Chapter 7.  
services is not analogous to the provision of the vast majority of market based services. While other professions are subject to fiduciary duties to their clients, the legal profession's fiduciary duty to clients is overridden by his or her duty to the court. The lawyer's commitment to the legal system, and thus to the community itself, must come first. These considerations, which form the essence of the legal profession, must always be taken into account in policy development, particularly in the context of competition policy reviews and proposals generally to deregulate the profession.

B Barristers, Solicitors and Legal Practitioners

Members of the independent referral Bars are sole practitioners in private practice who routinely accept work by referral on the instruction of solicitors. The work referred to barristers falls into two broad categories: advice (usually by way of written opinion) and advocacy.

In four jurisdictions (New South Wales, Victoria, Queensland and the Australian Capital Territory), the profession remains formally divided, with separate bar associations and law societies regulating barristers and solicitors respectively. In the other jurisdictions, the profession has been formally ‘fused’ and a single regulatory body is responsible for all legal practitioners.

The distinction between jurisdictions where the legal profession is fused and where it is divided is not, however, clear cut. In contrast to the United Kingdom, the Bars in Australia have never held monopoly rights on appearances in court, even in those jurisdictions where the legal profession is divided formally. The flexibility of this approach has enhanced the competitiveness of the legal profession and ensured a range of choices for both practitioners and clients.

For example, solicitors in New South Wales have practising certificates issued as "solicitors and barristers" and are free to provide advocacy services and promote themselves as such. Many solicitors regularly and freely perform advocacy functions in all jurisdictions, however the profession is designated. Since 1960, independent Bars have also emerged in Western Australia, South Australia, Tasmania and the Northern Territory, where the profession is formally fused.

C. Consumer Protection

Practising Certificates

All solicitors are required to hold a current practising certificate in order to practise law. Legal practitioners practising exclusively as barristers in all jurisdictions except Queensland, 10 Tasmania, the Northern Territory and the Australian Capital Territory are also required to hold practising certificates. (Note that certain Crown employees are exempt from the requirement to hold a practising certificate.)

In most jurisdictions the relevant Law Society or Bar Association issues practising certificates to practitioners. In Western Australia, the Legal Practice Board is responsible for issuing practising certificates.

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10 The Queensland Attorney-General has announced that he intends to introduce this requirement for barristers in the near future.
In each jurisdiction, the relevant authority can issue practising certificates subject to conditions. These conditions can apply either to a specific certificate, or to a class of practising certificate. Newly admitted solicitors usually receive a “restricted” practising certificate which requires them to work as an employed solicitor for a period before an “unrestricted” practising certificate is issued.

**Trust Accounts and Fidelity Funds**
Solicitors who hold clients’ monies are required to hold such funds in trust accounts. These accounts are subject to strict controls through trust account regulations. Trust account regulations vary significantly between jurisdictions.

Fidelity funds are designed to provide compensation to clients who lose money as a result of their solicitor’s dishonesty or failure to account for monies that have been entrusted to them. The maintenance of fidelity funds is carried out by the corresponding Law Societies and provisions in relation to those funds vary between jurisdictions.

**Professional Indemnity Insurance**
It is a condition of private legal practice in all jurisdictions that solicitors obtain professional indemnity insurance to meet claims of civil liability from clients or third parties that may arise from the practitioner’s negligence or error. In most jurisdictions legal practitioners practising exclusively as barristers are also required to hold professional indemnity insurance.

In most jurisdictions, the requirement for compulsory professional indemnity insurance is prescribed under the relevant legal profession legislation. In some cases, the authority is given to the Council of the Law Society or Bar Association to approve an insurer and the terms and conditions of insurance. In most jurisdictions, this is the function of the Attorney General. In three major jurisdictions (NSW, Victoria and Queensland), the insurance arm of the Law Society negotiates and obtains insurance cover from insurers. Currently the ACT Law Society, New South Wales Bar and Victorian Bar have several insurance providers.

Generally speaking, the partnership/sole practice structure adopted by the profession means that legal practitioners are subject potentially to unlimited liability for professional negligence. However, legislative schemes in New South Wales and Western Australia permit capping of liability. In essence, under the Professional Standards Acts operating in NSW and Western Australia, “occupational associations” can apply to the Professional Standards Council established under the legislation for a scheme to limit liability.

Such schemes are designed by the applicant association and can limit liability of members by reference to amounts insured, or business assets or multiples of fees. In each case the maximum liability must be covered by insurance or the net value of business assets. Partners and staff of scheme members have the same protection against liability as the members. The quid pro quo for the benefit of limitation is that the association must:

- ensure that the members of the scheme have insurance (or net business assets) to cover the relevant level of liability;
• have a system of handling complaints and discipline of members; and
• have a program of risk management in place.

**Reservation**
The titles of 'solicitor', 'barrister' and 'legal practitioner' are understood in our community as referring to people who have obtained a law degree, who have undergone legal training and who are obliged to comply with certain professional and ethical requirements. This is reflected in legislation that:

- prohibits persons without such qualifications using these titles; and
- reserves 'legal work' to qualified legal practitioners.

Restrictions on unqualified persons holding themselves to be legal practitioners are justified by virtue of the position occupied by the legal profession in the administration of justice. The consequences of persons falsely representing themselves to have legal qualifications are sufficiently serious, in an individual case and in the operation of the system as a whole, to justify legislation.

The reservation of certain types of work to be performed by people with certain qualifications is by no means unique to the legal profession. Similar restrictions apply to nurses and doctors. As with medical professionals, even the most mundane task undertaken by legal practitioner will involve significant matters of importance to the client. It will also be, to a greater or lesser extent, important to the maintenance of the rule of law.

The need for the current restrictions can thus be summarised as follows:

a) the recognition that those undertaking legal work have important responsibilities and functions in the administration of justice; and

b) to make it clear beyond doubt that persons who do not have the appropriate qualifications should not hold themselves out as being qualified to perform such work.

**D Complaints and Discipline**
Public interest requires that legal practitioners be subject to a disciplinary system that is supervised by the court and administered in a manner designed to enable appropriate standards to be both established and maintained. Whatever disciplinary system may be appropriate in other walks of life, the role of legal practitioners as officers of the court demonstrates the need for (and importance of) a robust disciplinary system for them.

The systems in place for dealing with complaints about legal practitioners and for disciplining practitioners differ considerably between jurisdictions. In all jurisdictions, the Supreme Court retains its inherent jurisdiction to supervise the legal profession, including the ability to strike practitioners off the relevant roll.

**Initial Investigation**
In the case of Queensland barristers, there is no legislated complaint or disciplinary procedure. All such matters are dealt with under the inherent jurisdiction of the Supreme Court.
For Queensland solicitors and for all practitioners in the Australian Capital Territory, the Northern Territory, Tasmania and Victoria complaints are received and investigated initially by the relevant law society or bar association. In South Australia complaints are initiated through the Legal Practitioners Conduct Board (appointed by the Governor and nominated by the Attorney General and Law Society). In Western Australia the Legal Practitioners Complaints Committee (appointed from members of the Legal Practice Board) undertakes this role. In New South Wales, all complaints are made directly to the Legal Services Commissioner, who may then refer complaints to the Bar Association or Law Society for investigation.

Generally these bodies have limited powers of sanction, such as reprimand or a fine. If a more serious offence is suspected, the investigative body “prosecutes” the matter before the relevant disciplinary body.

**Disciplinary Body**

In all jurisdictions except the ACT, the principal disciplinary body is constituted separately to the relevant law society or bar association. In the ACT, the Law Society Professional Conduct Board and Bar Association Disciplinary Tribunal conduct disciplinary proceedings internally and may apply to the Supreme Court to have the relevant practitioner removed from the roll. As already noted, the relevant body for all complaints about Queensland Barristers is the Supreme Court. Disciplinary bodies in other jurisdictions are as follows.

- NSW: Administrative Decisions Tribunal
- Northern Territory: Legal Practitioners Complaints Committee
- Queensland: Solicitors Complaints Tribunal
- South Australia: Legal Practitioners Disciplinary Tribunal
- Tasmania: Disciplinary Tribunal
- Victoria: Legal Profession Tribunal
- Western Australia: Legal Practitioners Disciplinary Tribunal

In NSW, Queensland, Tasmania and Victoria the body has (subject to appeal mechanisms) the power to permanently revoke a practitioner’s right to practise law. In the ACT, Northern Territory, South Australia and Western Australia the Court retains the sole power to permanently revoke a practitioner’s right to practise. In these jurisdictions the disciplinary bodies may suspend a practising certificate for a period of time.11

**Independent Bodies**

As already noted, in South Australia and Western Australia the primary complaint body is external to the profession. Tasmania, Queensland, Victoria and New South Wales12 also each have an independent legal “ombudsman”. In New South Wales and Victoria these officers have wide ranging powers to receive and investigate complaints and prosecute disciplinary offences as well as playing a general role in supervising and monitoring disciplinary and complaint processes. The Tasmanian and Queensland Legal Ombudsman perform only the general role of supervising and monitoring disciplinary and complaint processes.

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11 Three months in SA, twelve months in the ACT and NT, and two years in WA
12 Titled ‘Legal Services Commissioner’ in NSW.
E Business Structures

Legal practitioners are free to choose among a range of existing and evolving forms of business structure. Traditional forms of legal practice have been as a sole practitioner (as either a barrister or solicitor) or in a partnership of solicitors; however, new forms of business structure are slowly becoming available.

Barristers

The criterion of sole practice is entrenched by rules of respective Bar Associations requiring members to be sole practitioners, preventing barristers from entering into partnerships. A further dimension of the sole practice rule is that the professional services of a barrister are provided directly by the individual barrister. Under this rule, the services may not be provided by a corporate entity that engages an individual barrister or barristers to carry out professional work.

The bar associations consider that the sole practice rule serves to reflect a traditional characteristic of an independent bar. For members of the Bar, the rule highlights the personal nature of the ethical duty owed by each counsel, to both clients and the court, by reinforcing the individual nature of the duty. It also fosters a suitable business structure for members to conduct business because it encourages independence and neutrality, which are important to clients of the Bars. There has not been any serious momentum towards incorporation from within the Bars, probably because upon examination of that alternative, no significant fiscal or other benefits have been demonstrated as flowing from incorporation, while the existing benefits that flow from the sole practice rule would be lost.

Incorporation

Victoria, South Australia, Tasmania and the Northern Territory currently allow incorporation of a legal practice on an unlimited liability basis with strict controls placed on who may be directors and shareholders.

Recent legislation in NSW permits incorporation of legal practices under the Corporations Law, including limited liability and public listing, from 1 July 2001. At least one director must be a solicitor with an unrestricted practising certificate, and the solicitor director(s) are generally responsible for the management of legal services. While the corporation itself is not subject to licensing, solicitor directors and solicitor employees remain subject to the Solicitors’ Rules and professional obligations in providing legal services. The Legal Profession Act and regulations also prevail over applicable corporate law (including the constitution or other constituent documents of the company) to the extent of any inconsistency.

Multidisciplinary Practices

A multidisciplinary practice (MDP) is a business in which members of more than one profession or occupation provide an integrated service for clients. Only NSW currently allows solicitors to practise in multidisciplinary partnerships. All other jurisdictions prohibit profit sharing with non lawyers.

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13 This is not the case in Western Australia. The constitution of the Bar Association of Western Australia was recently amended to delete reference to the sole practice rule.
2.2 **GATHERING STATISTICAL INFORMATION**

### Sources

The Taskforce’s plan was to develop a national statistical “snapshot” of the legal profession today to provide a basis for developing ideas about where the profession may be headed. The following major sources of information about the legal profession in Australia were identified.

**Australian Bureau of Statistics (ABS)**

The ABS surveys legal practices and other organisations in the “legal services industry” every three years in a study entitled *Legal Services Industry Australia*. For the purposes of the survey, “the legal services industry” includes private solicitor and barrister practices and patent attorney businesses, and other organisations such as government solicitors, legal aid authorities and community legal centres whose primary activity is the provision of legal services. The most recently released survey covers the 1998-99 financial year.\(^{14}\)

**Constituent Body Surveys**\(^{15}\)

The Law Society of New South Wales has conducted Annual Practising Certificate Surveys since 1993/4. These surveys collect a range of demographic information as well as information about dominant areas of practice, income, access to and use of technology and other issues relevant to the professional lives of solicitors. The Law Society publishes an annual Profile of Solicitors which combines information from the practising certificate survey with the annual census data from the Law Society’s membership database.\(^{16}\)

The Law Institute of Victoria has also conducted Annual Practising Certificate Surveys since 1998. Questions relate to practitioner categories, years since admission, employment, job satisfaction, areas of practice, income, pro bono work, Internet usage, Institute membership and use of Institute facilities.\(^{17}\)

The Taskforce understands that the other law societies and bar associations do not conduct a detailed annual survey of members. Consistently collected demographic information (beyond the sex of practitioners) was not readily available to the Taskforce. They do, however, conduct one-off surveys on particular issues such as work practices, retention and recruitment from time to time. Basic information (location and sex) is also collected during the process of issuing practising certificates.

**Australian Legal Directory**

The Law Council assists AUSDOC in collecting information from the State and Territory law societies and bar associations for collation and publication in the annual *Australian Legal Directory*.\(^{18}\) AUSDOC also provides the Law Council with statistical


\(^{15}\) The term “constituent bodies” refers collectively to the twelve law societies and bar associations that are members of the Law Council of Australia.

\(^{16}\) Law Society of New South Wales, *Profile of Solicitors of New South Wales*


tables based on the information contained in the Directory. These statistics are based around the location of firms, partners and individual practitioners.

**Law Council of Australia Membership Summary**
Law societies and bar associations provide information to the Law Council of Australia in December each year for membership purposes. The information includes number of members, categories of membership and gender of members. This information is collated by the Law Council Secretariat to provide a broad national profile.

**Recruitment Surveys**
Private sector agencies conduct surveys of the legal industry for a number of purposes. For example, Mahlab has released a survey of the legal marketplace reporting on salaries in Australia, Asia and the United Kingdom and providing commentary on other trends such as working hours, flexible work practices, trends relating to in house legal departments and recruitment issues.19

**Department of Education, Training and Youth Affairs (DETYA)**
DETYA collects reasonably comprehensive demographic information from all universities (except Bond University) about individual students.20 Categories include gender, number of indigenous students, socioeconomic status, disabilities, and ethnicity.

**Legal Research Organisations**
The Centre for Legal Education21 publishes a range of information about legal education, law students and law graduates. This includes annual publications (such as the Australasian Legal Education Handbook), one off studies (Access to Legal Education) and longitudinal studies (Career Destinations of Australian Law Graduates). Bodies such as the Victoria Law Foundation and the Law and Justice Foundation of New South Wales also fund and publish research on a range of topics relevant to the legal profession. A number of these studies have been utilised throughout this Discussion Paper.

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19 Mahlab Recruitment Survey 2000
21 A research body examining issues associated with legal education in Australia. Currently located at the University of Newcastle in New South Wales
B Problems
As noted, the Taskforce has found it necessary to rely on a range of sources in trying to develop a national profile of the profession. The statistics are necessarily incomplete in some areas, and cannot be said to produce a comprehensive picture. At best they represent a rough sketch of the profession as it presently stands.

Definitions
While the Law Council collects a range of statistics from law societies and bar associations about categories within the profession, an examination of the information provided shows that there are no nationally consistent definitions applied to the profession. Each body has its own membership categories and applies its own definitions to these categories. Corporate lawyers and government lawyers prove particularly difficult to quantify, as they are not treated uniformly across the law societies and bar associations. This issue is discussed further in section 2.3 below.

Similar issues arise in relation to the accuracy of DETYA statistics on “law students”. Unfortunately, the course descriptions by DETYA used for differentiating law and legal studies do not reflect a split between the professional course and other courses, and universities self select which category students are placed in. The result is that detailed demographic information about students studying law as a professional discipline cannot be reliably differentiated from students studying legal studies.

Comprehensiveness
The ABS statistics while reliable, do not provide a complete picture of the profession, as they are descriptive of the “Legal Services Industry”, defined by ABS as all businesses whose primary activity is the provision of legal services. This includes solicitors’ firms, barristers’ practices and patent attorney firms but excludes corporate counsel and those working in other organisations employing lawyers that cannot be characterised as part of the “industry”, including accountancy firms, banks and government departments and agencies whose core business is not the provision of legal services. This means that the ABS presents an accurate picture of the industry, but not of the whole legal profession.

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22 The categories used for law and legal studies courses are.

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>08.01</td>
<td>Law, Legal Studies General</td>
</tr>
<tr>
<td>08.02</td>
<td>Law</td>
</tr>
<tr>
<td>08.03</td>
<td>Law Enforcement</td>
</tr>
<tr>
<td>08.04</td>
<td>Legal Studies</td>
</tr>
</tbody>
</table>

As already noted, statistics collated for the Australian Legal Directory are based around identifying the name and contact information of firms and individual practitioners and do not provide a range of information of interest, including income, hours of work and age of practitioners. Law Council membership statistics also do not include lawyers who are not members of a law society or bar association.24

**Sample Sizes**

One off surveys conducted by law societies and bar associations often involve very small samples. For example, the Law Society of Western Australia *Report on the Retention of Legal Practitioners* involved a sample size of 47.25 Similarly, a sample of 61 practitioners responded to the South Australian *Survey of Part Time Work Practice*.26 While such surveys provide qualitative information about the experiences of participants, the sample size is such that broader conclusions cannot necessarily be drawn.

On issues such as age, income and hours of work, a national picture cannot be drawn. While the Law Society of New South Wales and the Law Institute of Victoria now conduct relatively comprehensive Practising Certificate Surveys, other law societies and bar associations either do not collect detailed demographic information from their members at all, or do so only sporadically in relation to particular projects or issues. While New South Wales and Victorian solicitors certainly constitute the majority of legal practitioners, the number of lawyers working in large firms in Sydney and Melbourne means that this group is not necessarily statistically representative of the “typical” practitioner in all jurisdictions.

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24 The Victorian Bar and Law Institute of Victoria provide statistics of non member practitioners who are subject to regulation by that Body.
2.3 **Statistical Profile of the Profession**

There are no definitive statistics on the legal profession in Australia. One reason is that there is no definitive definition of the legal profession.

The majority of the statistics provided in this chapter will focus on legal practitioners working in the “legal services industry”. This title has been chosen because it is the nomenclature used by the Australian Bureau of Statistics (ABS) in its surveys. The “legal services industry” as defined by ABS includes private solicitor and barrister practices, patent attorney businesses and other organisations such as government solicitors, legal aid authorities and community legal centres, whose primary activity is the provision of legal services. Where the term “legal services industry” is used in this chapter, it is used in relation to this part of the legal profession.

Statistics associated with the “legal services industry” do not include qualified lawyers who are currently not practising law. For example, many qualified lawyers work for government departments and agencies, regulatory authorities, and in academia. These practitioners, while part of the profession, are not included in statistics collected by ABS dealing with the “industry”.

Nor does the “legal services industry” include qualified lawyers who are employed in other industries. For example, many qualified lawyers work for corporations. The number of these “corporate lawyers” is unknown. Based on its constituent body membership, the Law Council estimates that there are at least 2700 corporate lawyers in Australia. However, many corporate lawyers are not members of law societies and therefore go uncounted in statistics.

It should be noted that the statistics used in this Discussion Paper do not reflect the greater membership of the Law Council. Through its constituent bodies, the Law Council represents both legal practitioners who are currently working in the “legal services industry” as well as qualified lawyers who are working in other industries or who are currently not practicing law. Consequently, through its constituent bodies, the Law Council represents approximately 36,500 qualified lawyers.

**A The Legal Profession**

**Numbers**

At the end of June 1999, there were 30,923 qualified legal practitioners working in the “legal services industry”. The vast majority of these practitioners, 25,044, worked in private solicitors’ practices and 3,704 worked as barristers.

Since the last ABS Survey in 1995-6 there has been a 6.6% increase in the number of qualified legal practitioners working in solicitors’ practices (23,495 in 1995-6) and a 10.6% increase in the number of barristers (3,350 in 1995-6).

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27 As at December 2000.
Table 1. Number of Legal Practitioners in Australia 1998-1999

<table>
<thead>
<tr>
<th>Number of legal practitioners</th>
</tr>
</thead>
<tbody>
<tr>
<td>Private solicitors’ practices</td>
</tr>
<tr>
<td>Barristers’ practices</td>
</tr>
<tr>
<td>Patent attorney businesses</td>
</tr>
<tr>
<td>Government solicitors</td>
</tr>
<tr>
<td>Legal aid authorities</td>
</tr>
<tr>
<td>Community legal centres</td>
</tr>
<tr>
<td><strong>Total</strong></td>
</tr>
</tbody>
</table>

**Gender**

Men continue to dominate the legal services industry. At the end of June 1999, 73.3% of all legal practitioners were male. This is despite the fact that approximately equal number of males and females graduate from law school. The gender division is particularly pronounced in specific parts of the legal profession. For example, 84.1% of all solicitors who were sole practitioners or partners were male and 89.3% of all barristers were male —see Table 2.

Table 2. Gender of Legal Practitioners 1998-9

<table>
<thead>
<tr>
<th>Males</th>
<th>%</th>
<th>Females</th>
<th>%</th>
<th>Persons</th>
<th>(%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sole Practitioners/Partners</td>
<td>10368</td>
<td>84.1</td>
<td>1955</td>
<td>15.9</td>
<td>12323</td>
</tr>
<tr>
<td>Employed Solicitors</td>
<td>7383</td>
<td>58.0</td>
<td>5338</td>
<td>42.0</td>
<td>12721</td>
</tr>
<tr>
<td>Barristers</td>
<td>3309</td>
<td>89.3</td>
<td>394</td>
<td>10.7</td>
<td>3704</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>21060</strong></td>
<td><strong>73.3</strong></td>
<td><strong>7687</strong></td>
<td><strong>26.7</strong></td>
<td><strong>28748</strong></td>
</tr>
</tbody>
</table>

The gender balance in government solicitors’ offices is similar to that found among employed solicitors, as the table below shows.

Table 3. Characteristics of Employment June 1999: Government Solicitors

<table>
<thead>
<tr>
<th>Solicitors/Barristers</th>
<th>Male</th>
<th>%</th>
<th>Female</th>
<th>%</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>498</td>
<td>58.5</td>
<td>353</td>
<td>41.5</td>
<td>851</td>
<td></td>
</tr>
<tr>
<td>Articled Clerks</td>
<td>12</td>
<td>42.8</td>
<td>16</td>
<td>57.2</td>
<td>28</td>
</tr>
<tr>
<td>Paralegals</td>
<td>65</td>
<td>38.7</td>
<td>103</td>
<td>61.3</td>
<td>168</td>
</tr>
<tr>
<td>Other</td>
<td>112</td>
<td>18.4</td>
<td>497</td>
<td>71.6</td>
<td>609</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>687</strong></td>
<td><strong>41.5</strong></td>
<td><strong>969</strong></td>
<td><strong>58.5</strong></td>
<td><strong>1656</strong></td>
</tr>
</tbody>
</table>

Legal aid offices and community legal centres are predominantly staffed by women.

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28 Australian Bureau of Statistics, August 2000, *op cit*
29 Ibid
30 Ibid (unpublished data). Note that this only includes government solicitors and does not include employees of crown prosecutors.
Table 4. Characteristics of Employment June 1999: Legal Aid Offices and Community Legal Centres  

<table>
<thead>
<tr>
<th></th>
<th>Male</th>
<th>%</th>
<th>Female</th>
<th>%</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Solicitors/Barristers</td>
<td>575</td>
<td>45.4</td>
<td>691</td>
<td>54.6</td>
<td>1266</td>
</tr>
<tr>
<td>Articled Clerks &amp; Paralegals</td>
<td>141</td>
<td>32.4</td>
<td>294</td>
<td>67.6</td>
<td>435</td>
</tr>
<tr>
<td>Other</td>
<td>396</td>
<td>22.0</td>
<td>1404</td>
<td>78.0</td>
<td>1800</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>1112</td>
<td>31.8</td>
<td>2389</td>
<td>68.2</td>
<td>3501</td>
</tr>
</tbody>
</table>

**Age**

National statistics on the age of legal practitioners are not available. However, trends relating to the age of solicitors can be seen in the statistics collected by the Law Institute of Victoria and the Law Society of New South Wales in their Annual Practising Certificate Survey.

The Law Institute of Victoria found that women represent 57% of practitioners aged under 30 and 44% of practitioners who are 30-39. However, both the numbers and proportions of women in practice drop away significantly as practitioners get older: women represent only 24.1% of practitioners aged 40-49 and 12.8% of practitioners who are over 50.  

The overall age distribution by gender in Victoria is summarised in Table 5 below.

Table 5. Age distribution by Gender (%): Victorian Solicitors 1998  

<table>
<thead>
<tr>
<th></th>
<th>Male</th>
<th>Female</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 30</td>
<td>13.8</td>
<td>34.5</td>
<td>21.0</td>
</tr>
<tr>
<td>30-39</td>
<td>26.4</td>
<td>39.2</td>
<td>30.8</td>
</tr>
<tr>
<td>40-49</td>
<td>30.3</td>
<td>18.1</td>
<td>26.1</td>
</tr>
<tr>
<td>50 and over</td>
<td>29.5</td>
<td>8.2</td>
<td>22.1</td>
</tr>
<tr>
<td><strong>Total (%)</strong></td>
<td>100</td>
<td>100</td>
<td>100</td>
</tr>
</tbody>
</table>

A similar pattern was found by the Law Society of New South Wales in relation to solicitors from New South Wales in its 1999 annual survey and is set out in Table 6.

Table 6. Age distribution by Gender (%): NSW Solicitors 1999  

<table>
<thead>
<tr>
<th></th>
<th>Male</th>
<th>Female</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 30</td>
<td>12.1</td>
<td>26.2</td>
<td>16.7</td>
</tr>
<tr>
<td>30-39</td>
<td>26.2</td>
<td>39.8</td>
<td>30.7</td>
</tr>
<tr>
<td>40-49</td>
<td>33.2</td>
<td>23.0</td>
<td>29.8</td>
</tr>
<tr>
<td>50 and over</td>
<td>27.4</td>
<td>9.0</td>
<td>21.3</td>
</tr>
<tr>
<td>Unknown</td>
<td>1.2</td>
<td>2.2</td>
<td>1.5</td>
</tr>
<tr>
<td><strong>Total (%)</strong></td>
<td>100</td>
<td>100</td>
<td>100</td>
</tr>
</tbody>
</table>

31 Ibid (unpublished data)
33 Ibid
34 Law Society of New South Wales, *Profile of the Solicitors of NSW*, 1999. The 1999 results have been used because the NSW Law Society has calculated age categories differently in the 2000 survey so direct comparison of the two states would not be possible.
Other Demographic Characteristics

It has often been suggested that the legal profession is dominated by people of white, upper middle class background. The Taskforce had initially hoped to be able to provide information about demographic factors, such as the number of practitioners from indigenous backgrounds, non English speaking backgrounds and low socioeconomic backgrounds to determine the accuracy of this statement.

However, as with many other areas of interest to the Taskforce, national statistics are not available examining these characteristics. As is discussed briefly above and in Chapter 4, the statistics available on university students do not provide the complete picture.

The only reliable statistics found are from the Law Society of New South Wales. In New South Wales, as of 1 October 2000 the majority of solicitors (65%) were born in New South Wales, with 78% born in Australia. This represents a 15% increase in the number of overseas born solicitors over the previous 12 months. The New South Wales Law Society does not publish statistics concerning the number of indigenous legal practitioners.

B “Legal Services Industry”

Numbers

At the end of June 1999, there were 7115 private solicitors’ practices and 3704 barrister practices in Australia. In addition, there were 9 Government solicitor organisations, 8 legal aid authorities and 152 community legal centres.

Size

The vast majority of legal practices in Australia are small. Barristers’ practices are in the vast majority of cases single-person entities. In addition, 56.3% of all solicitors’ practices have a total staff size (which includes principals, employed solicitors and support staff) of no more than 4 staff and 81.7% of all solicitors’ practices have total staff size of less than 10. However, although these smaller solicitors’ practices dominate numerically they contain only 33.2% of all qualified practising solicitors. Conversely, there are 76 solicitors’ practices in Australia that employ more than 100 people. They represent only 1.1% of all practices, but they contain 31.5% of all qualified practising solicitors.

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35 Law Society of New South Wales, Profile of the Solicitors of New South Wales, November 2000
Table 7. Solicitors’ Practices by size 1998-99

<table>
<thead>
<tr>
<th>Employment size (includes all staff)</th>
<th>Number of Practices</th>
<th>Number of qualified solicitors</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-4 persons</td>
<td>4004</td>
<td>56.3</td>
</tr>
<tr>
<td>5-9 persons</td>
<td>1808</td>
<td>25.4</td>
</tr>
<tr>
<td>10-19 persons</td>
<td>739</td>
<td>10.4</td>
</tr>
<tr>
<td>20-49 persons</td>
<td>407</td>
<td>5.7</td>
</tr>
<tr>
<td>50-99 persons</td>
<td>81</td>
<td>1.1</td>
</tr>
<tr>
<td>100 plus persons</td>
<td>76</td>
<td>1.1</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>7115</strong></td>
<td><strong>100</strong></td>
</tr>
</tbody>
</table>

As already noted, according to the ABS there are 3704 barrister’s practices in Australia. These practices employed a total of 2204 support staff (752 full time staff, 1124 part time staff and 328 casual/temporary staff). A vast majority (83.5%) of support staff of barrister’s practices are female.

**Location - State and Territory**

New South Wales dominates the operations of solicitors’ practices in Australia. 41% of all solicitor practices are in New South Wales and New South Wales’ solicitor practices employ 42% of all qualified legal practitioners in Australia. They also generate 45.6% of the total income of the legal services industry in Australia. In comparison, New South Wales’ proportion of the Australian population is 34%.

Table 8. Solicitors’ Practices by State 1998-1999

<table>
<thead>
<tr>
<th>State</th>
<th>Practices</th>
<th>Qualified practitioners</th>
<th>Other Staff</th>
<th>Total Income</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>%</td>
<td>No.</td>
<td>%</td>
</tr>
<tr>
<td>NSW</td>
<td>2912</td>
<td>40.9</td>
<td>10,332</td>
<td>41.3</td>
</tr>
<tr>
<td>VIC</td>
<td>1944</td>
<td>27.3</td>
<td>6,536</td>
<td>26.1</td>
</tr>
<tr>
<td>QLD</td>
<td>1097</td>
<td>15.4</td>
<td>3713</td>
<td>14.8</td>
</tr>
<tr>
<td>SA</td>
<td>483</td>
<td>6.8</td>
<td>1510</td>
<td>6.0</td>
</tr>
<tr>
<td>WA</td>
<td>438</td>
<td>6.2</td>
<td>1839</td>
<td>7.3</td>
</tr>
<tr>
<td>TAS</td>
<td>121</td>
<td>1.7</td>
<td>435</td>
<td>1.7</td>
</tr>
<tr>
<td>NT</td>
<td>52</td>
<td>0.7</td>
<td>182</td>
<td>0.7</td>
</tr>
<tr>
<td>ACT</td>
<td>111</td>
<td>1.6</td>
<td>497</td>
<td>2.0</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>7115</strong></td>
<td><strong>100</strong></td>
<td><strong>25044</strong></td>
<td><strong>100</strong></td>
</tr>
</tbody>
</table>

**Location - Country/City**

Statistics provided by the law societies and bar associations to the Law Council and collated by AUSDOC suggest that a majority of Australia’s solicitors (55.6%) are located in one of Australia’s capital cities. Significantly smaller numbers are located in the cities’ suburbs (25.6%) and country areas (18.8%). However, the averages are quite different in Queensland and Tasmania, where there are larger proportions of solicitors in country areas (reflecting the geographical spread of population in those states)

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36 Australian Bureau of Statistics, August 2000, op.cit
37 Ibid
38 Ibid
Table 9. Solicitors by location 1999

<table>
<thead>
<tr>
<th>City</th>
<th>No of lawyers</th>
<th>%</th>
<th>No of lawyers</th>
<th>%</th>
<th>No of lawyers</th>
<th>%</th>
<th>No of lawyers</th>
<th>%</th>
<th>Total</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>NSW</td>
<td>5377</td>
<td>53.2</td>
<td>2766</td>
<td>27.3</td>
<td>1973</td>
<td>19.5</td>
<td>10116</td>
<td>100</td>
<td></td>
<td></td>
</tr>
<tr>
<td>VIC</td>
<td>3656</td>
<td>53.8</td>
<td>2318</td>
<td>34.0</td>
<td>827</td>
<td>12.2</td>
<td>6801</td>
<td>100</td>
<td></td>
<td></td>
</tr>
<tr>
<td>QLD</td>
<td>1674</td>
<td>45.7</td>
<td>515</td>
<td>14.1</td>
<td>1473</td>
<td>40.2</td>
<td>3662</td>
<td>100</td>
<td></td>
<td></td>
</tr>
<tr>
<td>SA</td>
<td>998</td>
<td>78.1</td>
<td>195</td>
<td>15.3</td>
<td>84</td>
<td>6.6</td>
<td>1277</td>
<td>100</td>
<td></td>
<td></td>
</tr>
<tr>
<td>WA</td>
<td>1194</td>
<td>66.2</td>
<td>493</td>
<td>27.3</td>
<td>118</td>
<td>6.5</td>
<td>1805</td>
<td>100</td>
<td></td>
<td></td>
</tr>
<tr>
<td>NT</td>
<td>70</td>
<td>66.6</td>
<td>13</td>
<td>12.4</td>
<td>22</td>
<td>21</td>
<td>105</td>
<td>100</td>
<td></td>
<td></td>
</tr>
<tr>
<td>ACT</td>
<td>527</td>
<td>100.0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>527</td>
<td>100</td>
<td></td>
<td></td>
</tr>
<tr>
<td>TAS</td>
<td>259</td>
<td>57.7</td>
<td>45</td>
<td>10</td>
<td>145</td>
<td>32.3</td>
<td>449</td>
<td>100</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>13755</strong></td>
<td>55.6</td>
<td><strong>6345</strong></td>
<td>25.6</td>
<td><strong>4642</strong></td>
<td>18.8</td>
<td><strong>24742</strong></td>
<td>100</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The ABS has not published statistics on the location of barristers. The following statistics are based on Bar Association and Law Society membership figures as at December 1999.

Table 10. Practising Barristers by location 1999

<table>
<thead>
<tr>
<th></th>
<th>Private Bar</th>
<th>Other</th>
<th>Total</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACT</td>
<td>51</td>
<td>0</td>
<td>51</td>
<td>1.2</td>
</tr>
<tr>
<td>Northern Territory</td>
<td>74</td>
<td>0</td>
<td>74</td>
<td>1.8</td>
</tr>
<tr>
<td>New South Wales</td>
<td>1655</td>
<td>42</td>
<td>1697</td>
<td>41.9</td>
</tr>
<tr>
<td>Queensland</td>
<td>539</td>
<td>23</td>
<td>562</td>
<td>13.9</td>
</tr>
<tr>
<td>South Australia</td>
<td>136</td>
<td>0</td>
<td>136</td>
<td>3.4</td>
</tr>
<tr>
<td>Tasmania</td>
<td>12</td>
<td>0</td>
<td>12</td>
<td>0.3</td>
</tr>
<tr>
<td>Victoria</td>
<td>1371</td>
<td>35</td>
<td>1406</td>
<td>34.7</td>
</tr>
<tr>
<td>Western Australia</td>
<td>113</td>
<td>0</td>
<td>113</td>
<td>2.8</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>3951</strong></td>
<td><strong>100</strong></td>
<td><strong>4051</strong></td>
<td><strong>100</strong></td>
</tr>
</tbody>
</table>

**Income**
During 1998-1999, the legal services industry generated $7,730 million in income of which $6,192 million (80%) was accounted for by solicitors’ practices and $843 million (11%) by barristers’ practices. Government funding of legal aid authorities and community legal centres provided $282 million.

This was a 28% increase on the income generated by solicitors’ practices in 1995-1996 and a 23% increase on the income generated by barristers’ practices in 1995-1996.

**Source of Income**
The major sources of income for solicitors’ practices were legal services in the fields of commercial, property and personal injury law. In contrast, the main sources of income for barristers’ practices were in the fields of personal injury, commercial and criminal law. This is illustrated in Table 11.
### Table 11. Sources of Income 1998-99

<table>
<thead>
<tr>
<th></th>
<th>Solicitors</th>
<th>Barristers</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>% of all practices involved</td>
<td>Value ($m)</td>
</tr>
<tr>
<td>Property (includes conveyancing)</td>
<td>85.5</td>
<td>1152.3</td>
</tr>
<tr>
<td>Wills, probate and estate</td>
<td>73.0</td>
<td>242.1</td>
</tr>
<tr>
<td>Banking and finance</td>
<td>15.2</td>
<td>373.5</td>
</tr>
<tr>
<td>Commercial</td>
<td>65.9</td>
<td>1820.9</td>
</tr>
<tr>
<td>Family</td>
<td>52.3</td>
<td>279.1</td>
</tr>
<tr>
<td>Criminal</td>
<td>42.5</td>
<td>131.3</td>
</tr>
<tr>
<td>Environmental</td>
<td>7.3</td>
<td>71.8</td>
</tr>
<tr>
<td>Intellectual property</td>
<td>10.7</td>
<td>192.3</td>
</tr>
<tr>
<td>Industrial relations</td>
<td>17.8</td>
<td>161.6</td>
</tr>
<tr>
<td>Personal injury</td>
<td>47.2</td>
<td>966.4</td>
</tr>
<tr>
<td>Administrative/constitutional law</td>
<td>7.9</td>
<td>83.7</td>
</tr>
<tr>
<td>Other</td>
<td>30.8</td>
<td>352.2</td>
</tr>
</tbody>
</table>

**Profitability**

In 1998-1999 the operating profit/surplus before tax was $1939.8 million for solicitors’ practices and $543.6 million for barristers’ practices.

The operating profit margins varied by type of organisations: solicitors’ practices recording a 31.4% profit margin and barristers’ practices recording a 64.7% profit margin.

The average return per barrister was $146,800 in 1998-1999, which varied according to the experience of the barrister. Barristers with 20 or more years at the Bar have a return per barrister of $227,600 compared to $153,100 for barristers with 10-19 years at the Bar and $86,000 for barristers with less than 10 years at the Bar.

The profitability of solicitors’ practices varied by the size of practice and generally increased with size of practice. The average return (ie operating profit and salaries of qualified lawyers) per legal practitioner working for solicitors’ practices was $109,600. However the average return for practices with employment of less than five persons was $47,500. The average return for practices with employment of 100 persons or more was $159,700.

Another notable feature of the ABS survey results is that solicitors’ practices that employ 100 or more persons (and representing 31.5% of the total number of qualified solicitors) generate 45.2% of all operating profit of the legal services industry. Conversely, solicitors’ practices that employ less than 5 persons (representing 17.8% of the total number of qualified solicitors) generate only 9.4% of all operating profit of the legal services industry.

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41 Australian Bureau of Statistics, August 2000, op.cit
Table 12. Profitability of Solicitors’ Practices 1998-942

<table>
<thead>
<tr>
<th>Employment size (includes all staff)</th>
<th>Number of Practices</th>
<th>Number of qualified solicitors</th>
<th>Operating profit before tax</th>
<th>Return per solicitor</th>
<th>$’000</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-4 persons</td>
<td>4004</td>
<td>4452</td>
<td>17.8</td>
<td>182.1</td>
<td>9.4</td>
</tr>
<tr>
<td>5-9 persons</td>
<td>1808</td>
<td>3860</td>
<td>15.4</td>
<td>230.3</td>
<td>11.9</td>
</tr>
<tr>
<td>10-19 persons</td>
<td>739</td>
<td>3136</td>
<td>12.5</td>
<td>201.2</td>
<td>10.4</td>
</tr>
<tr>
<td>20-49 persons</td>
<td>407</td>
<td>3904</td>
<td>15.6</td>
<td>318.4</td>
<td>16.4</td>
</tr>
<tr>
<td>50-99 persons</td>
<td>81</td>
<td>1813</td>
<td>7.2</td>
<td>131.5</td>
<td>6.8</td>
</tr>
<tr>
<td>100 plus persons</td>
<td>76</td>
<td>7878</td>
<td>31.5</td>
<td>876.4</td>
<td>45.2</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>7115</strong></td>
<td><strong>25044</strong></td>
<td><strong>100</strong></td>
<td><strong>1939.8</strong></td>
<td><strong>100</strong></td>
</tr>
</tbody>
</table>

42 Ibid
2.4 SUMMARY OF CHALLENGES

A CHALLENGES FOR PROFESSIONAL BODIES

- The lack of consistency of definitions in constituent body membership categories.
- The inappropriate classification of law and legal studies courses by the Commonwealth Department of Education, leading to the unavailability of reliable statistics about law students.
- The lack of any available national information about the demographics of the legal profession, including ethnicity, Aboriginal or Torres Strait Islander descent, income and location (rural/suburban/city).
CHAPTER THREE:

THE WORLD IN 2010

Most lawyers are risk identifiers, not risk takers. Our training in stare decisis (precedent) makes many believe that you can only find the future by studying the past. We walk through life backwards.43

Examining who we are today, and the trends that have led us here, can really only take us so far. As one interviewee noted, “the most important trend will be the one that nobody predicts”.

Despite this stark reality, we can look to experts in a variety of fields of endeavour and draw broad conclusions about key areas of potential influence over the next ten years and how these areas might affect legal practice and the legal profession.

This Chapter draws heavily on international literature, but also on the instincts of members of the Australian legal profession. Our purpose at this point is to identify the broad trends driving change and the possible outcomes for the profession. Chapters 4 to 7 will examine the consequences in more detail and propose some actions that individual practitioners, firms and the legal profession as a whole can take to be prepared for the future.

In our information surveys, discussions and research, a number of issues arose again and again as those that would shape the future of the legal profession. Not surprisingly, they are the same ‘drivers’ that are shaping the rest of the world. These drivers are:

3.1 Advances in information technology;
3.2 Globalisation;
3.3 Changes in the competition and government regulation;
3.4 Changes in demographics and social attitudes; and
3.5 Advances in science.

This Chapter discusses the identified ‘drivers’ individually and sets out general trends related to them in Part A, and the way these trends may affect legal practice in Part B. Inevitably there is a considerable overlap between the various drivers described in this Chapter and in the consequences for the profession. The final section of this Chapter draws together the trends and provides a summary of the most likely changes to areas of practice and ways of practice.

43 Robinson, Charles F, Stampede to Extinction?, http://www.rclaw.com/stampede.htm
3.1 INFORMATION TECHNOLOGY

Perhaps digital technology is a kind of evolutionary leap that takes the intelligence of our species to a new dimension and expands its capacities to the very edge of the Universe. If this is so, it is a humbling question to ask whether legal imagination can keep up with such changes.\[44\]

Up until the mid 1990s, technology had little real impact on the practice of law other than some streamlining of legal services and provision of basic search facilities. Since that time, information technology has rapidly changed both the world and the way the world does business beyond recognition.

A Trends

Cyberspace

The Internet is not a physical object with tangible existence, but a set of network protocols adopted by a large number of individual networks to facilitate the transfer of information among them. ‘Cyberspace’ can be characterised as a multitude of individual, but interconnected, electronic communications networks.\[45\]

Virtually everything can be done ‘virtually’ in cyberspace. In the 21st century, the virtual world is almost as real as the physical one. Virtual offices allow people to work from home. Virtual businesses can exist solely in cyberspace. The physical world of banks, shops and governments is being increasingly dematerialised into the ‘virtual’ domain.

Access to Information

The information super highway has made information readily available in massive quantities to anyone with access to a computer. According to the ABS, in August 1999 nearly 23% of all households (1.6 million) had home Internet access, an increase of nearly 27% over the August 1998 estimate. By February 2000 this figure had increased to 28% (1.9 million adults).\[46\] 41% of Australia’s adult population accessed the Internet at some time over the 12 month period to February 2000.\[47\] The most frequently cited reason Internet users give for going on line is "information".\[48\]

Rather than actually saving time, many people feel that information technology has made their days longer, as more time is needed to process ever increasing quantities of information. The average office worker now communicates with 24 different people per day, using eight different types of communication tools.\[49\] Technology also means that workers can effectively be contacted 24 hours a day. Email is adding to, not solving, the problem of information overload. It has been shown that it can

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45 Zekos, Dr George I, “Internet or Electronic Technology: A Threat to State Sovereignty?”, 1999 (3), The Journal of Information, Law and Technology (JILT)
46 Australian Bureau of Statistics, Use of Internet by Householders, Australia, August 1999 & June 2000
actually increase rather than decrease the number of face to face meetings, as meetings are now held to resolve disputes arising from electronic communication.  

**Smart Systems**
The capacity of computers to analyse and perform routine tasks has developed rapidly. After years of unfulfilled promises, we are finally seeing the development of genuinely useful expert systems which automate routine but complex functions, usually with greater accuracy than the manual process they replace.

**Attacks on Individual Privacy**
Computers and the Internet are effectively rewriting many longstanding social rules. One of these is our assumption about our right to privacy. The vast amount of information, which is now being captured and is available for data “mining” raises significant questions for individual privacy. In the past, the most significant protection of privacy lay in the sheer cost and effort involved in retrieving personal information, and the impermanence of the forms in which such information was stored. The Internet largely removes these safeguards. Privacy protection for records of an individual’s expenditure patterns, medical records and other personal information is becoming more problematic.

Governments are possibly the greatest beneficiaries of privacy invasions. New technologies allow governments to watch over the lives of citizens with greater ease and less possibility of detection. Industry and civil libertarians in the United Kingdom and the United States consider that the new “packet sniffing” technology (allowing interception and analysis of huge quantities of data as it passes through Internet Service Providers) poses an unprecedented threat to individual privacy.

Amendments to the Commonwealth *Australian Security Intelligence Organisation Act* passed in 1999 permit security agencies to access ISPs to obtain information. Under the new law, the Australian Attorney-General can authorise legal “hacking” into private computer systems, as well as copying or altering data, as long as there is reasonable cause to believe it is relevant to a “security matter”. The legislation is the direct result of the efforts of international law enforcement agencies through a group known as the International Law Enforcement Communications Seminar. Similar schemes are under consideration in many other countries.

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50 Burkeman, Oliver, “Get a life”, *Sydney Morning Herald*, 9 December 2000, p.30
53 Note, however, that on 21 November 2001 the *Privacy Amendment (Private Sector) Act 2000* will enter into force. It amends the *Privacy Act 1988* by adding a privacy regulation regime for the private sector to the already existing privacy regulation regime in the Commonwealth public sector. There will be exemptions in the case of small business operators, registered political parties, agencies and state or territory authorities or prescribed instrumentalities.
54 Campbell, Duncan “Many governments tapping emails”, *The Canberra Times*, 21 August 2000, p.16
56 http://www.wired.com/news/print/0,1294,32853,00.html
57 Ibid
In simple terms, ecommerce is the production, sale and distribution of products via telecommunications networks. It encompasses activities such as electronic trading of goods and services, on line delivery of digital content, electronic funds transfers, electronic bills of lading, commercial auctions, on line sourcing, direct consumer marketing and after sales service. Its only difference with “real” trading lies in the medium of the commercial activity.57

In 1999, global ecommerce was worth about $US150 billion, with 80% of transactions being business to business. Some retail areas have made significant inroads (15% of retail stockbroking and 5% of retail book sales are made over the Internet). “Eretailing” has tripled in the US in the last year, and grown even faster in Europe and Japan. Its influence is more than just in direct sales, but also in awareness. For example, surveys in the US suggest that while only 3% of new car sales were made over the Internet, about 40% involved use of the Internet during the decision making phase.58

According to the Australian Bureau of Statistics,59 nearly 5% of all Australian adults (652,000 people) used the Internet to purchase or order goods or services for their own private use in the 12 months to August 1999. This compared with 3% (425,000 adults) in the previous 12 months.

Internationalisation of Business
Technology has made time zones, distance and international boundaries largely irrelevant. To some extent, national laws are also becoming irrelevant.

Web sites are now a powerful means of international advertising. A business does not have to be huge to compete in cyber space: the attractiveness of a Website is related to the skill and creativity of its designer, not the size of the business behind it. They are also not expensive: many US Internet Service Providers will give businesses web space for free.

Rather than integrated international firms, international networks and alliances are popular. Technology means that entire legal service delivery teams (lawyers, paralegals, experts, technical support staff, secretaries) can come together and work over the Web, with every element tracked on line and all members of the team having simultaneously knowledge of progress.60

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58 “The Internet: Magnet or Vortex?”, The Weekend Australian, 26-7 February 2000, p41
59 Australian Bureau of Statistics, August 1999, op.cit
Chapter Three: The World in 2010

B Threats and Opportunities for the Profession

Growth Areas of Practice

The information technology revolution has brought a new field into legal practice: cyberlaw. The fields traversed by cyber lawyers are breathtakingly broad: free speech, undesirable/unlawful content, misdirection of Internet traffic, hacking, defamation, trade secrets, patents and copyright, enforceability of contracts, tax issues, security issues, financing of dotcoms, joint ventures, mergers and acquisitions and government regulation. Those practising cyberlaw will need to not only understand and keep current with the laws on an international scale, but will also need to understand the technology itself.

Within the broad cyberlaw umbrella, ecommerce and the laws relating to it will be a significant growth area of practice, despite the recent dotcom crash. With some exceptions, the law has generally lagged significantly behind technological developments. Domain name disputes, cybersquatting and protest sites can generate considerable amounts of work for the legal profession. Ecommerce is largely unregulated beyond traditional laws at the moment. It will need its own laws, its own rules. It is a global development that goes beyond jurisdictional boundaries, and will therefore require global co-operation to produce rules.

Case Study: eCom-Adviser

An online service has been established to give small business access to legal, marketing and technical advice on establishing a web presence. The service is a joint venture developed by Gilbert and Tobin, IDG Communications (publishers of PC World magazine) and technology consultants evive.

For a set 6 month subscription fee users have access to information about such issues as how to register a domain name, set up a website and create a contract on line. Available information includes case studies, business models, industry reports and tips for users.

As knowledge information and retrieval becomes important, growth is likely to occur in intellectual property. Legal practitioners with backgrounds in information technology law will be of significant value when patents or other intellectual property rights are sought over software or other technological innovations. Copyright law may also become an increasingly litigated area as the impact of digitalisation on all forms of copyright is more widely felt. The case involving the rock band Metallica and software company Napster illustrated a trend towards conventional businesses attempting to exert their intellectual property rights in the face of the Internet's ability to duplicate and transmit.

The resolution of international disputes will also be a growth area. The internationalisation of business has already meant that commercial lawyers cannot specialise in one jurisdiction, but must understand commercial laws across the globe.

63 Ellis, Stephen, “Digital discord is music to lawyers’ ears”, The Australian, 1 June 2000, p30
Case Study: Court Disputes Resolution International

Since 1997 the Western Australian District Court and the Singapore Subordinate Courts have had a ‘strategic relationship’ involving mutual visits, video conferencing and exchanges of information. In 1999 this relationship was further expanded into the co-mediation program known as Court Disputes Resolution International.

Co-mediation has involved a judge in Western Australia participating via video link with a judge in Singapore in the mediation of disputes that have been the subject of litigation in Singapore. Mediation is confined to issues of fact and involves two judges providing an early neutral examination of the strengths and weaknesses of each party’s case.

There had been six co-mediations by the end of 1999 and all had resulted in settlement.

Commoditisation of Legal Services

Lawyers may have to reinvent themselves in terms of such core roles as dispute resolution specialists, institutional designers and human system architects. “Mere” informational, transactional and documentary services (as opposed to interactive services like client counselling and trial advocacy) eventually may be handled by a sufficiently advanced technology.

In the 21st century, artificial intelligence may be able to replace qualified lawyers in some areas. According to Richard Susskind, a leading commentator on law and technology, many transactional legal processes will be “commoditised”, that is, reduced standard legal forms and processes and delivered on line.

Computer programs have already been developed which allow members of the public to perform basic legal tasks such as preparing simple wills without consulting a lawyer. The next generation of programs may be able to perform ‘gatekeeper’ functions such as preliminary case analysis. With the assistance of smart systems, members of the public will be able to perform routine tasks previously undertaken by lawyers such as filing for divorce and handling small claims.

On line conveyancing has already been introduced in the United Kingdom, and its imminent introduction in Australia promises transactions that are faster, paperless, more efficient and more reliable. Government studies have shown potential savings of $80 million per year, presumably much of this in reduced legal costs.

For the majority of individual consumers, preparation of legal documents such as wills, mortgage papers, divorce documents and conveyancing transactions are the only services needed from the legal profession. Technology allows the possibility of such contact to be made entirely over the Internet, with much of the transaction being handled by the software itself. In essence, the “informational” content of legal practices will be removed, as the information will be available to the public either for free or at a very low cost. Those lawyers whose primary work is offering such

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64 Blaxell, Justice Peter “The Future Role of Australian Courts in Resolving International Disputes”, Reform, Issue 76, Autumn 2000, p12
66 Susskind, Richard, Transforming the Law, Oxford University Press, United Kingdom, 2000
67 “HTML Lawyer.”, Lawyers Weekly, 22 December 2000, p22
commodity services will be replaced increasingly by both electronic suppliers and non legal suppliers.

**Case Study: Freeserve Desktop Lawyer**

In April 1999, UK based firm Dixons launched an online public legal service for the 1.3 million subscribers to its Freeserve free Internet access service. “Freeserve Desktop Lawyer” allows subscribers to purchase, download and use a range of forms, deed and documents designed to help with common legal problems.

Wills are the most popular legal product sold on the website. Since its launch, the company has sold over 13,000 wills over the web. Divorce is the second most popular product, and by April 2000 Desktop Lawyer had captured 6% of the total divorce law trade in the United Kingdom.

The prime purpose of Desktop Lawyer is to enable people to represent themselves. The divorce package contains a complete set of documents necessary to petition the court for divorce or separation. Clients can also access free legal support through an unlimited number of 20 minute phone calls.

The challenge posed by information technology and artificial intelligence creates the opportunity for the profession to free up time from mundane tasks and provide a more value added service. Effective use of technology also allows paralegals to play a greater role in providing routine legal services. The roles of both paralegals and legal secretaries are likely to undergo significant change.

**Dealing with Informed Clients and Value Adding**

If the information age has created infonomics, then the smart companies are realising that the crucial ingredient in keeping the information flowing are those old fashioned concepts of customer loyalty, trust and satisfaction.

One of the key outcomes of new technology is the empowerment of the user. Use of the Internet can make clients better informed, and as clients become more empowered they will begin to expect more from lawyers. The legal profession will need to spend more time and effort building better relationships with clients, understanding their needs, and providing a personalised service.

As technology increasingly becomes able to perform analytical tasks, the question arises whether work which computers can perform should be reserved for lawyers arises. A legal practitioner’s time is usually divided between performing a range of repetitive, “process” tasks and exercising professional judgement. Clients are increasingly aware of the routine nature of much legal work and are reluctant to pay large legal bills for such services.

70 Burns, Christine, “(When) will we be replaced by virtual lawyers”, NSW Law Society Journal, Vol 38 No 6, July 2000, pp68-70
Case Study: Legal-E Incorporator

A Brisbane company has launched an automated online service for the creation of any type of Australian company called "Incorporator".

Users follow a simple online automated interview process and all required forms are generated automatically and downloaded to the user’s computer. The service is available 24 hours a day, seven days a week, and includes free telephone support. Payment is also made online via a secure system.

The system has been developed by a team of specialised solicitors, programmers and web developers and includes context sensitive references and hyperlink to relevant legislative provisions.

The Latent Legal Market

...even if lawyers cannot realistically aspire to be cherished, they can and should aspire to make the law simpler, more transparent, more available, less arcane and generally more accessible to the average person.

The “latent legal market” is the unmet demand for legal services. It is created by the fact that the required legal assistance is currently too costly, too inconvenient or not recognised at all by the consumer. Access to legal information on the Internet has enabled ordinary citizens to become more aware of their rights. Similarly, commoditisation of legal services can reduce the costs to consumers.

Richard Susskind has noted that there are many areas of commercial activity where non lawyers would benefit from legal advice but currently do not seek such advice due to issues such as cost and accessibility. According to Susskind “a vast, latent legal market will emerge on the so called information superhighway, giving everyone (and not just lawyers) ready and inexpensive access to legal products and information services”.

Case Study: Freelawyer

A Melbourne lawyer has launched Australia’s first Internet site offering free legal advice, DIY wills and preparation of simple documents. Visitors to www.freelawyer.com.au can design a basic letter of employment, create a power of attorney, prepare a will or obtain legal advice about buying a house.

Rather than doing himself out of a job, solicitor Lewis O’Brien, the creator of the site, believes that the site will lead to fewer legal problems and improve relationships between solicitors and clients: “I like to be involved helping people at the front end rather than cleaning up the mess later on”.

Four principal reasons have been suggested to explain why people who know they need legal assistance do not seek it:

71 “Need to incorporate? Get on the Internet, fill in the cyberforms, start your printer”, Canberra Times, 16 August 2001, p14
72 Shaw QC, 2000, op.cit, p70
76 Ketchell, Misha, “Lawyer offers free legal advice on the Net”, The Age, 7 July 2000, p49
fear generally;
- fear that they will be sold more legal services than they want/need;
- the need to retain control of their lives (and therefore litigate in person); and
- not seeing the expense of legal advice as a high priority.77

Knowledge and information gained on the Internet can help overcome these factors. New technologies can therefore be used to “deal lawyers in” to the new economy rather than deal them out.78

### Case Study: AussieLegal

AussieLegal provides online legal information to assist consumers to learn more about their legal rights before approaching a lawyer. There are hundreds of different kits available covering such topics as will making, buying and selling a home, applying for a divorce, and defending charges such as assault and driving offences.

The kits are written by lawyers and cost between $34 and $90. They are designed to help consumers develop a better understanding of the legal advice that they will receive, and assist them in asking the right questions of their lawyer.

The website also offers a referral service identifying firms specialising in different areas of law. Law firm referrals are in fact more popular than straight information kits.

### Technology and the Courts

The areas in which technology has the most significant effect within the courts are in virtual courts, electronic filing, electronic appeals and case management. Virtual courts allow counsel, judge, parties and witnesses to be in five different places. They also allow electronic case tracking, electronic filing of pleadings, electronic management of documentary evidence. Even electronic hearings are possible in the case of appeals or matters heard by judges with no witnesses, or where the witness’s credit is not in issue.

Electronic courtrooms are being developed in many Australian jurisdictions. The Federal Court has introduced on line filing and payment of filing fees. More recently, the Federal Court has launched the “e-Court” project involving an encrypted Internet site for conducting directions hearings in cyberspace.80 New South Wales has announced technology initiatives including electronic lodgement, electronic records management and on line access to court files. A trial of “virtual call overs” (conducting pre trial hearings and case management matters over the Internet) is also being introduced into selected Queensland and Western Australian courts.

The advantages of on line dispute resolution include:

- the ability to transfer large quantities of information to other parties and the arbitrators quickly and cheaply;
- communication via email/video conferencing without physical presence;
- reduced delays;

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77 “HTML Lawyer:”, op.cit, p22
78 Lane, Bernard, “Click here for legal advice”, The Australian, 11 December 2000, p11
80 Merritt, Chris, “All rise! The virtual e-Court is in session”, Australian Financial Review, 23 February 2001, p37
accessibility of documents by all parties at any time.\footnote{81}

Case Study: Supreme Court of Western Australia

The new courtrooms in the May Holman Building in Perth’s central business district use integrated technology to create a system that is both user friendly and flexible. All documents and physical exhibits are lodged before trial and scanned into a database. Once admitted into evidence, the electronic exhibits are automatically assigned an exhibit number and fed into the court’s exhibit database for that case.

Judges, lawyers and other participants can bring their own laptop computers into the courtroom and connect to the specialised local area network and server, which holds all information necessary for the trial. All participants can simultaneously read documents and diagrams, examine exhibits and watch computer generated re-enactments.

Audio/video conferencing facilities mean that the court can hear evidence from virtually anywhere in the world. Various venues can be accessed through a database of local, interstate and international video sites. Purpose written software assigns each participant a dedicated microphone and time stamps simplify retrieval of oral evidence. Digital recordings of transcript are transmitted electronically to the transcription service. As portions of transcript are completed, they are transmitted to participants in the courtroom.

The Court also plans to introduce a pilot project using Internet chat rooms for hearings before Supreme Court Masters.

According to one senior litigator interviewed for the project, the availability of real time transcripts has also begun to change some of the skills associated with advocacy. Instead of relying on memory skills in cross examination, counsel increasingly are able to receive transcripts of evidence in chief before cross examination. Counsel will therefore conduct a more forensic cross examination of evidence in chief. The interviewee believes that this trend will lead to more and more cases being conducted on the papers. Justice Moynihan of the Queensland Supreme Court believes that “orality is going”, and that the use of technology will mean that cases are more segmented, involving a series of events rather than a cataclysmic trial.\footnote{83}

Electronic filing raises the possibility of affidavits being unsworn at the time of filing. New conduct rules will need to be developed to ensure that the benefits of “efiling” are not abused.

The rise of electronic filing also means that courts need to carefully address access issues, particularly for those unrepresented litigants who do not have access to a computer. In the United States, the District Court of New Mexico has solved this problem by installing a series of public access terminals (or “kiosks”) where members of the public can access the system.\footnote{84}

\footnote{81} Sturzaker, Damian, “Dispute Resolution in the New Millennium”, In Black and White, December 1999, p23
\footnote{82} Watters, Simon, “Digital Courtrooms in Perth – the Courtroom Strikes Back”, Law Society of Western Australia Brief, Vol 26 No 9, October 1999, pp5-7
\footnote{83} Lane, op.cit, p11
Legal ecommerce

Most successful Internet companies are really in retailing or computers or finance or media or some other service or manufacturing business. The Internet is just the tool they use to do business incredibly efficiently and quickly. It flows through the whole operation, just like electricity. A retailer doesn't say to a customer 'Come to my store because I'm wired up to electricity or because I keep the air conditioning on'.

Legal ecommerce is likely to have two elements:

- Interfacing with clients: allowing the client to log on to the firm’s site and access documents, costs, financial reports, status reports;
- New forms of service, such as on line legal guidance.

One noticeable feature of the vast majority of legal sites on the Internet is that they are aimed at providing information to the legal profession. To succeed, the focus will need to shift to clients. Making full use of the possibilities of the Internet involves more than merely adding a Website to an existing business. The whole business should be redesigned to take advantage of the best features of the web: its ability to simplify communications and thereby save time and money.

Differentiating one firm from others in an international market for legal services will be crucial, and a well designed site can attract significant hits and subsequent new clients. Part of good design lies in the provision of basic legal information to clients in a clear, easy to use format. The Legal Standards Information Council is a coalition of commercial, non profit and legal publishing interests that seek to ensure that legal information is provided online in an efficient, effective and accessible manner. The Council has developed Best Practice Guidelines for Australian Legal Websites covering such matters as legal content, presentation and firm information.

Effective legal ecommerce will also rely on implementing appropriate technology to ensure the security of online transactions. Digital signatures are an important part of this technology. Developing public key infrastructure (PKI) will give a firm the ability to issue its own digital signatures, enabling encryption of email until it reaches its intended destination and is "unlocked" by the recipient's own digital signature.

However, developing PKI is not a cheap process, and the cost will be well beyond the reach of most individual law firms. It will be important for law societies and bar associations to examine options for developing PKI systems and making them available to all of their members. The Law Institute of Victoria, for example, is already examining the possibility of developing PKI for its membership. The cost involved in developing PKI also means that it is likely that smaller law societies and bar associations will look to the Law Council for assistance and national leadership. The Law Council has recently established a specialist Ecommerce Committee to examine the issue of PKI and other matters associated with ecommerce.

However, ecommerce on its own is not a magic cure for an ailing business. The future does not belong to ecommerce Internet specialists - it belongs to ordinary businesses which redesign processes to take advantage of the huge benefits offered.

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85 Kaletsky, Anatole, "Ecommerce is dead", The Australian, 7 February 2000, p40
86 Further information about the The Legal Information Standards Council, including a copy of the Guidelines can be found at http://lawfoundation.net.au/lisc
by the Internet to design better products, better methods of service delivery and listen
to their clients. It also involves more than just setting up a website. Law firms that do
not offer a service or product online are not really involved in ecommerce, even if
they have spent tens of thousands of dollars on an elaborate website. Websites that
offer no more than information are merely a “digital brochure in the sky”.87

A firm that has a site that does not go beyond the “digital brochure” risks alienating
important potential clients. A recent survey of corporate counsel shows that while
67% of them use the Internet daily, 61% rarely access law firm websites, as they are
often viewed as containing out of date information.88

Websites can be divided into four broad categories:
- First generation: limited to brochures or electronic business cards;
- Second generation: target content specifically designed for a client base;
- Third generation: access digital repositories of content; and
- Fourth generation: use extranets to present specific client content.89

Case Study: MyCounsel.com90
MyCounsel.com combines a comprehensive source of accessible legal information with legal
solutions and services delivered by a certified network of legal practitioners. It is designed
primarily for individuals and small business.

The information on the site covers a large range of relevant topics, including criminal law,
bankruptcy, credit law, family law, immigration, landlord/tenant, wills, workers compensation,
traffic tickets refunds/complaints, intellectual property, personal injury and real estate.
Information within topics is arranged in an easy to use format for non lawyers. The site also
contains an “Answer Centre”, a virtual law librarian that searches thousands of pages of legal
information to find answers to consumer questions.

MyCounsel.com also provides for the online purchase of legal services through a national
network of practitioners. The site includes the names, contact details and practice
information about nearly 400,000 lawyers. Lawyers do not pay a fee to be listed.
MyCounsel.com verifies the Bar standing of all lawyers who list a profile on the site. In
addition, lawyers who choose to be part of the “Certified Network” are subject to referee
checks, interviews and ongoing monitoring and testing.

MyCounsel.com provides services online on a flat fee basis. Clients complete a secure
online interview and MyCounsel.com selects the most appropriate lawyer. Arrangements can
also be made for clients to select a specific lawyer. The client and lawyer can then either
work in person or online through a secure message centre.

87 Janssen, Peter “Law @ the speed of value”, Presentation to Law Council of Australia, 2 September 1999
88 Priest, Marcus, “No one cares about law firm websites, new survey”, The Legal Insider,
89 Aresty, Jeffrey, “The Virtual Law Office”, American Bar Association Elawyering Website,
http://www.abanet.org/elawyering/papers/virtual_ofc.htm
90 Description drawn from American Bar Association Elawyering Website,
http://www.abanet.org/elawyering/casestudies/examples_lawrelated.htm
**Legal Education**

At present, computer based learning packages focus on workbooks (interactive open learning materials) and resource books (virtual libraries). Email is used for non-simultaneous communication. In the future, law modules will be designed from scratch to make full use of a range of computer based education tools such as:

- Simultaneous video conferencing and Internet relay chat;
- Non-simultaneous email and electronic conferencing;
- Interactive open learning workbooks;
- A digital law library of full text source materials;
- Computer based simulation games; and
- Virtual tutors, designed to function as managers of the learning process by devising and recommending suitable learning strategies and timetables for the individual student’s needs.\(^9^1\)

**Case Study: Virtual Postgraduate Courses\(^9^2\)**

Corrs Chambers Westgarth and the University of Western Sydney have launched on line postgraduate courses in Decisional Dispute Resolution and International Commercial Dispute Resolution. Students from Australia and overseas will be able to complete the courses without ever stepping foot inside the university.

The courses include on line tutorials using webcams and streaming audio/video, on line chat rooms and links to study materials. Students will be able to annotate web based academic papers and course materials with questions and comments that will appear in a pop up display attached to the relevant text. The eventual aim is for the site to become a central reference point for alternative dispute resolution in Australia.

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3.2 GLOBALISATION

Globalisation is a double edged sword: a powerful vehicle that raises economic growth, spreads new technology and increases living standards in rich and poor countries alike, but also an immensely controversial process that assaults national sovereignty, erodes local culture and tradition and threatens economic and social stability. A daunting question of the 21st century is whether nations will control this great upheaval or whether it will come to control them.93

Empirically, globalisation is the sum of millions of individual acts by people who have availed themselves of the potential granted them by the technologies that shrink the planet. Marshall McLuhan first raised the idea of globalisation with the concept of the ‘global village’. It is simply the tendency for individuals, corporations and institutions to expand beyond national boundaries and participate in a world community. Globalisation also is dynamic in nature. It is not a static system, but a dynamic, ongoing process that involves the inexorable integration of markets, nation-States and technologies to a degree never witnessed before.94

Viewed in this context, globalisation is not a single phenomenon, but rather the outcome of a range of other influences. It impacts on, and in turn is affected by, the other drivers identified in this chapter.

A Trends

Globalisation is not primarily a clash of opposites, it is more like a race to be entered into a club...There are three clear questions: what are the political implications of the world’s population becoming more interconnected; what happens to those who are not connected, either because they do not want to or cannot be; and how can a healthy diversity be maintained if everyone does the same thing.95

Globalisation and Technology

Globalisation has been enhanced and encouraged by the forces of technology, most noticeably the Internet. The development of wireless technology will further enhance access to these services. The Internet has been an important tool of globalisation; however, other modern technologies have played their part in shrinking the globe and expanding our range of shared experiences and ideas. The reach and importance of globalisation includes international exchanges at the economic, political, cultural and social levels, through other international media such as television and transportation.96

95 James, David “Political Eclipse”, Business Review Weekly, 17 November 2000, p210
Global Business and Competition

At the beginning of the 20th century, approximately 15% of the world’s population were part of the market system. One hundred years later, this figure has soared to 90%.97

The removal of many protectionist barriers over the last 20 years has meant that multinationals no longer operate discrete operations in each country. Multinationals now locate different aspects of their “value chains” in different countries. This phenomenon has transformed world trade: one third of shipments are now within the same country. In many respects, direct foreign investment has replaced international trade. The most profound impact of globalisation is the increased flow of capital.98

Globalisation has resulted in competition on a scale never before seen. The public sector competes with the private. International ecommerce pits local businesses against foreign ones in areas that have not previously experienced international competition. Niche markets will take on new dimensions as those with special expertise publicise that expertise on the web and expand their client base worldwide.

Social Effects

While issues of globalisation have largely been discussed in an economic context, globalisation involves far more than just economics. Globalisation is also about everyday things such as eating new foods, cheering sports heroes from unlikely places and visiting faraway towns and villages that a generation ago seemed as close as the far side of the moon.99

Fears that Internet technology would isolate people and weaken community ties remain. But there are signs that the opposite effect is occurring. The Internet is used by lobby groups to bring together large groups of people from different groups in different places and allow them to understand what they have in common.

Related to the rise of the interest group is the view that there is little confidence in the political process, particularly in countries which have been subject to democratic institutions for the longest. Democratic institutions that were previously seen as the best means of asserting human freedom are now viewed by some as “a force of nature weighing down on the individual”.100

The economic imperative of globalisation has also had profound social effects. According to the Secretary General of the United Nations, the backlash against globalisation has occurred because the global market is not yet based on rules based on shared social objectives, and the positive effects of globalisation have not been evenly distributed.101

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97 James, David, 17 November 2000, op cit, p210
98 James, David, “The world is going global; what will it look like?”, Business Review Weekly, 4 August 2000, p131
99 Elliott, Michael, “Globalisation is Good for You”, The Bulletin, ?? p100
100 James David, 17 November 2000, op cit, p209
101 Annan, Kofi, “Globalisation must benefit all”, Canberra Times, 14 December 2000, p9
Government

Globalisation is reshaping the fixed and firm boundary between domestic and international spheres and changing our conceptions of the proper domain of domestic and international law. Thus, there is no doubt that the process of globalization is transforming traditional conceptions and constructions of sovereignty. 102

The new international financial and trade arrangements that will be negotiated over the next few years will define the limits of national sovereignty in the 21st century. There has never before been an attempt to integrate the world’s political systems on such a scale. 103

The globalised world has already seen multinationals starting to overtake governments in size, power and influence. The combined worth of the world’s top five drug companies is twice the combined GDP of all of sub Saharan Africa. The influence these companies can bring to bear on world rules is many times greater than this. 104

A nation’s standing in the world is increasingly being measured by economic outcomes rather than other measures such as political freedom. 105 National Governments must take the wishes of multinationals into account or risk losing industries (and jobs) offshore. Like regulatory structures, national tax regimes are moving towards international lowest common denominators to avoid multinational exodus. Ultimately, multinationals owe no national allegiances, not even to the country from which they spring. For example, US companies appear willing to move business to Mexico at the cost of US jobs if labour costs are lower.

B Threats and Opportunities for the Profession

The challenge of globalisation is to think globally, not just in the geographic sense, but across disciplines. Understanding the likely effect of globalisation on law requires an examination of what is emerging in the global financial and commercial markets. 106

Growth Areas of Practice

As trade becomes international, knowledge of international trade law will become an important asset. The internationalisation of business also provides opportunities for lawyers to specialise in foreign laws of a particular country or region, or specialise in a particular field of practice and gain an international reputation. Clients will increasingly seek a one stop shop for international legal services to enable more efficient co-ordination of international business operations. Practice areas include banking, corporate finance and capital markets.

Mergers and acquisitions will become more common as the business world polarises between large multinational, multi-dimensional organisations and specialists working in niche markets. It is likely that innovation will become the realm of the small operator, and larger firms will increasingly buy innovation through buying

102 Zekos, Dr George op.cit
103 James, David, 17 November 2000, op.cit, p209
105 James, David, 17 November 2000, op.cit, p210-11
106 James, David “Globalisation, but by whose rules?”, Business Review Weekly, 27 October 2000, p111
out the smaller ones. Knowledge of national and international laws relating to areas such as joint ventures, financing, capital transfers and competition will be of particular value.

**Human Rights** is an important part of international law. As the world becomes smaller, so cultures around the world share experiences and develop a more shared understanding of basic human rights. Lawyers are now able to develop a specialised international practice in human rights issues.

**Internationalisation of Legal Practice**

As traditional boundaries to economic activity disappear, the most aggressive, innovative and intelligent players search the world for opportunities to create global markets...all of a sudden, customers are demanding different, highly specialised products and are purchasing them from the new generation of competitors who focus with laser-like precision on particular customer segments, products or elements of the business system.  

According to some commentators, global companies will shape world markets until there are two main groups: integrators (companies aiming for economies of scale by expanding markets across countries) and specialists. The problem for most Australian companies is that they remain nationally focussed, and have not even begun the race to globalise.

In the next decade, successful lawyers will not work in isolation, or within the constraints of their firm. As physical structures dematerialise into electronic equivalents, lawyers will work in global teams regardless of location. The internationalisation of business has meant that commercial lawyers no longer specialise in one jurisdiction, but need to keep abreast of developments around the world. A growing proportion of international transactions is now conducted in either US or English Law. The International Legal Services Advisory Committee (ILSAC) has noted predictions that in the not too distant future most international legal services will be provided by the 10-15 UK and US based mega firms.

The 57% of the world’s population located in Asia operates in roughly the same time zone as Australia. Australian firms have already taken advantage of this opportunity, with examples including Freehills’ role in the Singapore Island Project and Mallesons advice for Telstra on the Five Star joint ventures with pacific Century Cyber Works. Hourly rates in both Shanghai and Hong Kong are approximately double those charged in Australia, making both locations attractive expansion opportunities for first

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108 Ibid, p90
110 The International Legal Services Advisory Council (ILSAC) is a part-time advisory Council to the Commonwealth Government which provides a consultative forum for private and public sector interests on issues relevant to international legal services. See: [http://law.gov.au/aghome/advisory/ilsac/Welcome.html](http://law.gov.au/aghome/advisory/ilsac/Welcome.html)
111 Saville, Margot, “Lawyers facing up to realities of the world”, *Sydney Morning Herald*, 22 January 2001, p33
tier Australian firms. Chinese central and local governments are also outsourcing legal work, and international law firms are expected to pick up the work.113

The Internet and globalisation makes this a tantalising business opportunity. The question is whether the legal profession is ready to face the dramatic changes necessary to compete in a globalised world. While statistics collected by ILSAC show that Australia's trade surplus in legal services doubled between 1988 and 1999, the growth was slower than that experienced in other developed countries such as the US, France, Italy, Germany and the United Kingdom.114

Many segments of the legal profession are based in an abstract world of words rather than a physical world, and are therefore prime candidates for digitalisation. Instantaneous communication makes global practice a reality. Technology neutralises time zone differences and speeds up communications. Global markets facilitate global specialisation: a lawyer’s field of expertise can be quite narrow if the potential market is the world.

Recent research from the University of Auckland found that successful multinational service firms did not simply copy the strategies of the manufacturing sector. Rather they concentrated on developing capabilities focussing on the higher levels of customer contact and the intangible aspects of their services.115

This is not to say that every ‘High Street’ practitioner will be able to globalise their practice. Nevertheless, with the right business acumen the small business transnational corporation can be a reality. It is possible to have a specialised small business and trade directly with customers all over the world.

Case Study: Gilbert and Tobin116

Sydney Law Firm Gilbert and Tobin has been selected by the European Union (EU) as primary legal adviser for a crucial stage of its telecommunications deregulation program after an open tender process.

Gilbert and Tobin was selected primarily because of its expert knowledge in an extremely specialist area (telecommunications loop unbundling), with the low value of the Australian dollar representing the “icing on the cake”. (Our exchange rate means that Australian firms can presently provide partners to the European market for less than the cost of a second year solicitor from London.)

While the deregulation is occurring within the EU, the legal team is working from Sydney and from Gilbert and Tobin's joint venture partner's offices in Hong Kong.

114 Saville, 22 January 2001, op.cit
115 Pidgeon, David, “The Internationalisation of Legal Practice”, LawTalk, No 529, 18 October 1999, p10
Business Polarisation

The Internet is the great equalizer between solo and small firms and the large practitioner. Just as prospective clients will have access to an infinite amount of information about the law on the Internet, so will all lawyers.117

A key characteristic of the 21st century is likely to be the polarisation of business structures. As noted above, at one end of the spectrum will be huge, conglomerate businesses serving global markets with annual budgets larger than most nations and the ability to influence economic policies on an international level. However, the other end will be occupied by the specialist ‘maverick’: fast moving, client focussed solo operators and boutique firms offering cutting edge services with ultra smart technology to enable them to be anywhere, anytime. Such individuals and smaller organisations may prove better at winning customers because they are more willing to offer a personalised approach. The Internet also allows co-operation on a bigger scale. Virtual law firms can be built through networking arrangements between firms that specialise in particular jurisdictions or particular fields of practice. This approach allows clients the possibility of multijurisdictional service with the flexibility to make their own choice in each jurisdiction/field.

Case Study: Minters/Halsey & Associates Alliance118

Minter Ellison’s Perth office has entered into an alliance agreement with boutique firm Halsey & Associates. The agreement gives Halseys access to Minters’ client base, and Minters access to specialist tax advice. Neither firm will receive any commission for the referral work.

Halsey and Associates has two principals and specialises in providing tax and revenue law services tailored to the retail financial services industry. They will attend Minters partnership and marketing meetings but will remain as a separate firm, thus avoiding potential conflict of interest issues.

Regulation

The international community has a common interest in regulating many types of Internet transactions, such as fraud, criminal activity, anti-competitive activity etc. The Internet therefore facilitates the international harmonisation process as it brings into stark relief the futility of a merely territorial approach to regulation. Theoretically, Internet activity is simultaneously subject to all national regulations because the Internet can appear simultaneously in every territorial jurisdiction in the world.119

More and more regulation will be by way of international co-operation, as is the case in the European community. International organisations such as the World Trade Organisation will grow in power. The internationalisation of law will force the Australian States and Territories to face the futility of maintaining separate regulatory regimes in many areas.

117 Aresty, op.cit
119 Zekos, op.cit
While there is a significant movement to harmonise commercial law internationally, the process is neither fast nor easy. At present, the international legal system is still in a primitive state. In particular, taxation laws and competition policy have fallen through the cracks. Multinational conventions such as the Vienna Convention on the Sale of Goods are effectively written in stone and extremely difficult to change. Harmonisation is most likely to occur in areas of law that interest multinational corporations such as copyright or in areas where the interests of countries are closely aligned, such as crime.120

**Case Study: Solving Disputes About International Financial Transactions**

International financial transactions involve the movement of large amounts of “notional” money. The volume of derivative transactions is huge (in fact, ten times greater than the world’s gross domestic product). People who have never met each other make contracts across the globe.

Disputes over cross border financial contracts are resolved by one of seven law firms internationally. These seven firms compete with each other to arbitrate disputes. Their decisions are not binding, but work through “suasion”. Participants are not forced to accept ruling, but they will be “punished” by the market if they do not.

The system has no lender of last resort and no supporting legal authority. The market is totally dependent on the assent of the participants to the “implied law and customs” of the market.

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120 “Stop signs on the Web”, *The Australian*, 18 January 2001, p2
121 James, 27 October 2000, *op cit*, p109
3.3 GOVERNMENT AND COMPETITION

Advocates of the 'new public management' tend to have a one dimensional view of human behaviour. Individuals are assumed, in accordance with the oversimplified model used by economists, to be self interested maximisers. In some respects we are witnessing a form of social engineering that we have not seen since the demise of socialism.122

In the late 20th century there was a change in public perceptions about the legitimate role of the public sector. The current political philosophy is of small, non-interventionist government, deregulation of the economy and a general preference for private over public ownership. In Australia, the current Commonwealth Government has ended the traditional distinction between core and non core government functions and does not envisage a prohibition on outsourcing any area of government activity.123

A Trends

Privatisation and Outsourcing

The Government’s outsourcing programs... are the clearest expressions of its preference for the private over the public sector, sometimes regardless of the cost, and over the objections of senior bureaucrats.124

For most of the 20th century, it was generally accepted that it was the role of government to provide public utilities and infrastructure such as sewerage, power and water. Governments usually established these utilities because the private sector saw no profit in doing so. Governments ran public hospitals, public transport and public schools to ensure access to these basic services. Similarly, governments ran banks and insurance companies in order to act as the lender/insurer of last resort for citizens who the private banks and insurers would not cover. Public good rather than profit was the motive of public enterprise.

Governments around the world are selling public assets, outsourcing functions and abandoning service provision to the private sector. The role of the public sector has moved from direct provision of key services to administering the competitive tendering of work to the private sector. Thousands of professionals such as engineers, scientists, lawyers and information technology specialists have left the public sector.125 The dangers of this approach have been raised in recent reports on the Commonwealth Government’s information technology outsourcing program, which have found that savings have been considerably less than anticipated while at the same time, serious service delivery problems have occurred in agencies such as Centrelink, affecting the broader Australian community.126 Nevertheless, while the IT outsourcing has now been put on hold, the Commonwealth Government’s general philosophy remains unchanged.

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123 Murphy, Katherine, “Outsourcing has no limits”, Australian Financial Review, 24 May 2000, p11
**User pays**

Lines dividing the public and private sectors will continue to be blurred and the private sector will perform many duties currently performed by government. Tied closely to efficiency is the concept of “user pays”. Where previously services were provided by the government free of charge, more and more services are being provided on ‘a pay as you go’ basis. The user pays philosophy is so endemic that the Commonwealth now charges *itself* for the provision of legal services.

**Deregulation of the Market**

Deregulation has been ongoing both in Australia and internationally since the early 1980s. In Australia, the National Competition Policy is driving deregulation and the removal of unnecessary barriers to professional practice between jurisdictions within Australia.

The World Trade Organisation’s General Agreement on Trade in Services (GATS)\(^\text{127}\) will expand this process of deregulation to an international scale. In a free trade environment, only lowest common denominator regulatory regimes are likely to survive, and some protections that the legal profession currently enjoys which are deemed unnecessary trade barriers will be unenforceable. While qualification requirements can generally be justified as a legitimate consumer protection, citizenship restrictions are likely to be affected by GATS.

Australia’s program is part of a much wider trend in developed countries towards reliance on market forces. Other markets are also moving towards reducing barriers to entry. The European Establishment of Lawyers Directive gives all EU nationals the right to practise law (including host state law) on a permanent basis in any other member state under their home professional title. Even countries that had previously relied on central control such as Russia and China are gradually moving towards a more open economy and acceptance of competitive markets.

**State Sovereignty in A Global World**

*The national borders that e-business breaks down are the ones that tax authorities have relied on as revenue collection points…Online businesses can operate internationally, in any jurisdiction, without leaving a “footprint” that will expose them to tax.*\(^\text{128}\)

The Internet threatens existing political intermediaries such as political parties and the media because it provides new channels between sources of information and ordinary members of the public. The conventional media no longer control the principal means of communication with the masses. A clear example of this was the use of the Internet by several anti-government activists in creating “jeffed.com” and “realjeff.com” to respectively attack and parody the Premier (whose had launched his own site called "jeff.com") during the 1999 Victorian State election campaign. The

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\(^{127}\) GATS provides that domestic licensing/qualification requirements are:

(a) based on objective and transparent criteria such as competence and ability to supply the service;

(b) not more burdensome than necessary to ensure the quality of the service; and

(c) in the case of licensing procedures, not in themselves a restriction on the supply of the service.

author of the first of these Websites chose this approach because the conventional media refused to publish his articles. The Premier was unable to close down the sites, both of which received considerable publicity and a significant number of “hits”.

Despite these developments, the nation state is not quite finished. While the rise of multinationals has led to significant deregulation in commercial areas, the state remains powerful. As already noted, technology has reinforced the power of governments to hold and process large quantities of information about their citizens. Similarly, regulation is actually increasing in other areas.129

**B Threats and Opportunities for the Profession**

Legal systems, infrastructure and political frameworks are designed to last centuries, businesses rarely last longer than two decades. Handing over government functions to the market through privatisation and deregulation may increase efficiency, but it runs the risk of occurring at the expense of overall resilience and having the perverse effect of involving business more in politics.130

**Areas of Practice**

Work in asset sales and corporatisation will continue until government privatisation programs are complete. Microeconomic reform has also created a need for lawyers with taxation expertise as the goods and services tax is implemented.

The increasing significance of the World Trade Organisation also means lawyers should position themselves to handle WTO dispute handling. Ten years ago, governments and their lawyers primarily conducted negotiation of trade issues; however, the rise of the WTO has greatly increased the influence of individual companies and their legal representatives.131 Roles could include making representations to government on behalf of affected firms, drafting reports and submissions to influence negotiating positions and representing countries before the Geneva based WTO dispute resolution panel.132

The user pays philosophy also brings a need for lawyers with creative abilities to write contracts. Outsourcing has already led to legal work being contracted to private firms. As health services are outsourced, increasingly sophisticated contractual arrangements are needed to guarantee public protection.

While politicians have made efforts to wind back the system, administrative law is strongly entrenched and difficult to erode. Although the Commonwealth Government is making concerted efforts to limit third party interventions on behalf of individuals (particularly by lawyers), lawyers will remain in the field providing at the least advice and preparing papers.

130 James, 17 November 2000, *op cit*, p211
132 Ibid, p24
Economics and the Courts

It is wrong to approach the administration of justice as if it involves some kind of service provided by the courts to litigants. Human life cannot be reduced to a series of consumer choices. Litigants come to court to assert their rights, not to exercise some form of consumer choice...The courts administer justice in accordance with law. This is a basic function of government. It is not a forum for exchange relationships.\[133\]

Market ideology is characterised by a suspicion of all government expenditure, and this suspicion is carried through to decisions about expenditure on the administration of justice.\[134\] Market oriented management focuses on the "three Es": economy, efficiency and effectiveness.

As governments reduce expenditure on the justice system, they turn increasingly to a user pays philosophy, and seek “continuous improvement” in efficiency. In courts, the effect is to look for procedures to speed up the court process. This can include fast track procedures and sentencing inducements for guilty verdicts.

The Chief Justice of NSW has warned of the “very real danger of creeping bureaucratization of judicial processes”.\[135\] Similar concerns have been expressed by Justice Drummond of the Federal Court, who has strongly criticised the imposition of market-oriented accrual accounting and output budgeting systems on courts as inappropriate.\[136\] Even the Chief Justice of Australia, the Hon Murray Gleeson, has spoken out against courts being treated as mere 'service providers', noting wryly that "the administration of criminal justice is not evaluated by opinion polls taken at Long Bay gaol".\[137\]

A court is not simply a publicly funded dispute resolution centre. Even in the resolution of private disputes, the courts serve a public service and constitute a core function of government.\[138\] While considerations of fairness, justice and truth are central to the administration of justice, affecting both the substantive laws and the procedures, these issues are not the concern of neoclassical economics. Chief Justice Spigelman has pointed out that “the values that are served by our system of justice and by our parliamentary institutions should not be regarded as subordinate to, let alone some kind of manifestation of, the allegedly superior values of the market system”.\[139\]

The legal profession and its representative organisations will need to be constantly vigilant in its defence of the fundamental values of the justice system.

\[138\] Ibid
\[139\] Spigelman CJ, 26 October 2000, op.cit
**Competition from Outside the Profession**

Government moves to deregulate the economy generally and the legal profession in particular will continue to affect the profession. Paralegals and legal technicians with some training, but without full qualifications, will be able to perform many quasi legal functions using advanced technology. More and more people will take advantage of online services (which may or may not be run by qualified lawyers) to deal with simple legal issues in some common general practice areas.

Competition will also come from outside the legal profession as other professions encroach on territories previously reserved to lawyers. The increasing desire from business for integrated legal and business advice will see many legally qualified people work outside traditional law firms.

**Case Study: CCH Australia**

Tax information provider CCH Australia has set up an Internet site that offers small business free answers to simple tax questions. The site also includes free information about starting and running a small business, including compliance forms, check lists, sample procedures and letters.

The question and answer service operates at several levels. Users can post a question on the noticeboard and a free answer will be posted within 7 days. For more complex questions, users access a free summary of a pre-packages answer from the CCH database. The user then chooses whether to pay (from $9 to $100) for the full answer. Where questions are too complex, the user is referred to a third party site for help.

CCH is also developing alliances with other groups, and is holding talks with Ernst and Young and KPMG. According to CCH’s Asia Pacific Chief Willem van Zanten, “It is only a matter of time before we create strategic alliances with the Big Five Accountants”.

CCH has also joined with its principal competitor, Butterworths, to develop a joint platform to be launched during 2001. The new platform will allow clients to perform a single search over the two company’s publications, and include hypertext links between them. Each company retains individual responsibility for the development, marketing, sales and customer relationships of its own publications.

**Business or Profession?**

*In some circles, the preoccupation with market solutions appears to be a form of utopian social engineering, advocated with a passion that we have not seen since the demise of Marxism. For those of us who believe that traditional professional values, especially ethical values, are worth preserving, these are important issues which require careful consideration. They may not survive the widespread adoption of a business paradigm.*

As competition from non lawyers increases, so too will the pressure on the existing ethical framework. The central issue will be how to develop ethical rules that allow the legal profession to operate in a business-like manner without eroding those factors that differentiate the profession and are essential to the practice of law.

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142 Spigelman CJ, 29 January 2001, op.cit
The content of ethical rules should be analysed to determine which concepts really are necessary to maintain the system of justice and which merely represent the profession’s notion of those fundamentals of practice it thinks clients expect, but which may not in fact be important to them 143. One example is the rule surrounding profit sharing with non-lawyers. Many clients need services integrating legal and business elements, but the current rules in almost all jurisdictions effectively prohibit the profession providing this kind of integrated service. Rules prohibiting integrated practices may be seen as responsive to clients’ needs. The issue of ethics is discussed in more detail in Chapter 5.3.

**Judiciary v Executive**

*The power to declare invalid an expression of the will of a democratically elected legislature involves a responsibility of a special kind. The existence of an unelected body with a capacity to decide that an enactment of an elected parliament is without effect will only be accepted if the community is confident that the power will be exercised for the purpose for which, and in accordance with the conditions upon which, it was given.* 144

The Australian economy is now essentially driven by an economic rationalist model. As noted in the previous section, the increasing role of economists creates a tension between the courts seeking to impose the rule of law and the government economic advisers seeking the rule of the market with less belief in the importance of the law. As one interviewee commented, “the rule of law is currently sitting on top of a recalcitrant managerial economic base”.

The independence of the judiciary has been increasingly under threat from a variety of sources. Judicial discretion is being eroded in a number of areas, most notably criminal sentencing. The judiciary has been under increasing attack and the Commonwealth Attorney-General has indicated that he does not see the role of the first law officer as defending the judiciary, believing this to be “an outmoded notion that has its roots in British tradition” 145.

The Executive arm of government in several jurisdictions has actively criticised judicial decisions. In the Northern Territory, the process culminated in the then Chief Minister (also the Territory’s Attorney-General) describing the justice system as “corrupt” and “having its whole focus on the criminal”. 146 While he later retracted these comments, the relationship between the Executive and Judiciary appears to have remained tense in the Northern Territory. The (then) Attorney General was also found guilty of contempt of Court in July 2001 for his comments in relation to a legal action examining the circumstances of the appointment of the Chief Magistrate.

Such attacks demonstrate the increasing need for the Law Council, law societies and bar associations to defend the independence of the judiciary, and to resist threats to it from the executive arms of government.

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145 Williams AM QC MP, Hon Daryl, “Judges must conduct their own defence”, *Australian Financial Review*, 27 April 2001, p57
146 Parliament Record No 21, Northern Territory Legislative Assembly *Hansard*, 22 February 2000
3.4 Changing Society

A stable society is possible where there is some assumed general agreement between its members of where a set of values can be identified which define the limits of both the social order and of the individual contributions to social groups within that society.\[^{147}\]

A Trends

Demographics
The aging of the "baby boomers"\[^{148}\] and extended life expectancies are leading to an unprecedented growth in the developed world's elderly populations at the same time that improved birth control technologies and numerous social, cultural and economic calculations are likely to lead to further declines in the number of its youth. This transformation will cause vast economic, social and political dilemmas and will gradually come to dominate the West's political and policy agendas.\[^{149}\]

By 2030, 25% of the developed world's population will be over 65. The shrinking workforce is both retiring earlier and living longer. The ratio of working taxpayers to non working pensioners in developed countries will drop from three to one today to 1.5 to one by 2030, placing an enormous burden on working age people.\[^{150}\]

Women are now both having children at an older age and having fewer children. According to ABS figures, nearly half of all mothers who registered a baby in 1999 were aged 30 years and over compared to 24% in 1979. The number of births registered during 1999 declined marginally, reflecting the continuation of declining fertility rates, which have been at below replacement levels since 1976. ABS also estimates that, if current trends continue, 26% of all women will remain childless.\[^{151}\]

The nature and structure of families has changed considerably over the last 20 years and is predicted to continue to do so. Traditional nuclear families are being replaced with sole parents, step parents and "blended" families. According to the Australian Bureau of Statistics, in 1997 more than one in five families were headed by a sole parent. The Bureau projects that over the next 20 years, the number of children living in two parent households is likely to decline. Some demographers predict that by 2021, almost one in three children aged under three will be living with only one parent.\[^{152}\]

It is also likely that more people will live in households without children than with children. Demographers have predicted that the declining fertility rate and aging of

\[^{147}\] Rowland, Dr Diane, ‘Cyberspace – A Contemporary Utopia’, 1998 (3) Journal of Information, Law and Technology (JILT)

\[^{148}\] “Baby boomers” refers to the generation born between the end of World War 2 and the early 1960s.

\[^{149}\] Papademetriou, Dr Demetrious, “New Approaches Required to Meet the Challenge of Demography”, BCA Papers Vo2 No 1, April 2000, p40


\[^{151}\] Australian Bureau of Statistics, Births, Australia 1999, 3301.0, November 2000

\[^{152}\] Russell, op cit, p56
baby boomers will mean that by 2016 the number of childless couples will exceed the number of couples with children.\textsuperscript{153}

In demographic terms, as we improve life expectancy and have fewer children, the Australian population will continue to age, further compounding public sector funding problems. Poverty, homelessness and the rights of the elderly will loom as large issues.

**Changing Attitudes**

Social commentators argue that the Baby Boomers entered the workforce with the desire to be successful and prosperous and worked hard, often at great sacrifice to their family life, to achieve this aim. They are also said to be concerned with security.\textsuperscript{154}

While broad generalisations will never hold true for the entire group, generally speaking Generation Xers\textsuperscript{155} have a different attitude. Many social commentators believe that for this generation, career, success, money and stability are less important than happiness. They are said to be focused on outcomes, not process, with structures being unimportant. They are also often viewed as both more responsible and more individualistic.\textsuperscript{156}

Attitudes of the ‘Net Generation’\textsuperscript{157} to copyright law present new problems. “The digital world is teeming with potential anarchists, teenagers who have never paid for a CD or game and who confidently expect to be able to continue exploring and taking possession of whatever they want in this uncensored, undefined, unprotected new territory called the Internet.”\textsuperscript{158} While attempts are being made to enforce traditional intellectual property rights, they are strenuously resisted and in practice ineffective in the face of a generation with the skills and knowledge to use technology in increasingly untraceable ways.

**The Demand Revolution**

You could say we are collectively manic. Or that as a culture, we have attention deficit disorder...we expect information to shine everywhere, soonest. But these expectations have also left us feeling exhausted, harried and under pressure as the faxes and emails roll in, creating a bogus sense of urgency.\textsuperscript{159}

Our love affair with technology has been largely based on the hope that by embracing a range of time saving devices, our lives will be easier and we will have more leisure time. Unfortunately, as technology has improved our efficiency, the pace of life has increased “to take up the slack”. In fact, many time saving devices

\begin{itemize}
\item \textsuperscript{153} Saltau, Chloe, “The changing family”, *The Sunday Age*, 6 August 2000, p9
\item \textsuperscript{154} Ashby, Allison, “How to land, and retain, the elusive generation X”, *Business Review Weekly*, 2 June 2000, p82
\item \textsuperscript{155} Generally speaking, children of the Baby Boomer generation; born between the early 1960s and around 1980.
\item \textsuperscript{156} Way, Nicholas, “A new world of people power”, *Business Review Weekly*, 16 June 2000, p65
\item \textsuperscript{157} Used to refer to the generation following ‘Generation X’, generally encompassing those who have been raised in a digital environment.
\item \textsuperscript{158} Bagnall, “Born to be wired”, *The Bulletin*, 15 August 2000, p25
\item \textsuperscript{159} Coles, Joanna, “Life in the Fast Lane”, *The Australian*, 24 November 1999, p16
\end{itemize}
have done no more than create larger expectations of what can be done, thereby increasing time pressures and stresses.

Those involved in global markets find that international time zones and information technology combine to mean 24 hour a day service. “For teleworkers plugged into a global workplace, there is quite literally no evening break, little time for sleep and a severely truncated weekend.”

As workers’ leisure time is shortened, so their demand for instant gratification is heightened. Today’s students, brought up with instant connectivity, are often impatient. Many of them are already bored with the Internet, considering it too slow, cumbersome, expensive and stationary. Many of these young people are turning to text messaging on mobile phones, and may turn back to the Internet once it is available through wireless technology.

In this context, the increased speed of life raises important social questions, such as:

- How is the community going to interact with technology to maintain the structure of society as we know and/or want it to be?
- How much time should be spent working?
- What sort of leisure time is required, not only for humans to function effectively, but also to exist as a community rather than a nation of individuals.

### The Digital Divide

As in all competitions, there will be winners and losers. Despite overall world wealth increasing, the gap between rich and poor will continue to widen. This is so both within individual societies and between nations as the results of global competition become clear. In 1996, the combined wealth of 358 richest individuals equalled the income of 2.5 billion poorest people in the world. Each of the advanced nations has a sizeable impoverished sub-population that, although receiving access to medical care, education and other services, has missed out on prosperity.

Clear losers in a technologically driven age will be those without the resources to access a computer and the Internet. As the world revolves around technology, those who fail to make the leap into the new technologies will be left behind and seriously socially and educationally disadvantaged.

Australian Bureau of Statistics (ABS) statistics show that 46% of Australia’s adult population is on line, placing us amongst the top 5 “wired” nations in the world (with USA, Norway, Sweden and Iceland). However, access is not evenly distributed throughout the community, and income is a big factor. The rate of increase in Internet access is significantly higher for higher income groups, and households with

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160 Head, Beverley “Workers of tomorrow or slaves of technology?”, *Business Review Weekly*, 14 July 2000, p54
161 Burkeman, Oliver, op.cit
164 Demuth, Christopher, “Count our blessings and failings”, *The Australian*, 23 May 2000, p25
income of over $150,000 per year are nearly eleven times more likely to be connected to the Internet than those with incomes of under $20,000.\textsuperscript{166}

Another noticeable trend is that access to the Internet seems directly related to age:

\begin{table}[h]
\centering
\begin{tabular}{|c|c|}
\hline
Age group & Percentage of total population in age group \hline
18 - 24: & 77\% \hline
25 - 39: & 55\% \hline
40 - 54: & 43\% \hline
55 & over: & 13\% \hline
\end{tabular}
\caption{Access to Internet: Percentage of total population in age group 1999\textsuperscript{167}}
\end{table}

According to the ABS, six million Australian adults accessed the Internet in the 12 months to February 2000. The ABS Study also showed that a higher percentage of men (46\%) than women (41\%) accessed the Internet. People with access are also more likely to be employed (only 23\% of unemployed persons had access).

Regional and remote areas lag behind urban areas largely because of lower average incomes and higher connection charges. 47\% of adults in capital cities accessed the Internet compared to 37\% in other areas.\textsuperscript{168}

\section{B Threats and Opportunities for the Profession}

\subsection*{Areas of Practice}

Australia is likely to follow the US trend for growth in litigation and class actions as our focus on individual rights grows. Class actions will probably be conducted by lawyers on a speculative basis. The issue of “victim’s rights” will also loom large, as it already has during debate about criminal sentencing. Some jurisdictions are overtly moving away from a deterrence/rehabilitation philosophy towards emphasis on the rights of victims to see the perpetrator punished. For example, the Chief Minister of the Northern Territory considers that mandatory sentencing is “putting some equality into the system, getting the fulcrum back where punishment is a definite part of the justice process”.\textsuperscript{169}

There is likely to be a further shift by governments towards use of criminal law. As society becomes more complex, governments are increasingly turning to criminal law to find short term solutions for social problems. Over the last 20 years, the range of punishable offences has greatly expanded, and the proportion of the High Court of Australia’s caseload involving criminal law has risen dramatically. In 1977 there were 14 special leave applications in criminal matters; by 2000 these had risen to 114.\textsuperscript{170} This trend will also push lawyers further towards performing ‘social work’ functions for clients: for many facing criminal actions, the appropriate remedy is detoxification, welfare or psychiatric help rather than a court appearance.\textsuperscript{171}

\begin{thebibliography}{9}
\bibitem{Barker} Barker, Garry, “Digital Divide Widening”, \textit{Sunday Age}, 10 December 2000, p6
\bibitem{ABS} Australian Bureau of Statistics, June 2000, \textit{op.cit}
\bibitem{Barker1} Barker, Garry 10 December 2000, \textit{op.cit}
\bibitem{Parliament} Parliament Record No 21, Northern Territory Legislative Assembly \textit{Hansard}, 22 February 2000
\bibitem{Kirby} Kirby, Justice Michael, “The crimes they are a-changing”, \textit{Canberra Times}, 23 February 2000, p11
\bibitem{Cooke} Cooke, Graham, “Paving the way for everyone to have their day in court”, \textit{The Canberra Times}, 5 August 2000, p2
\end{thebibliography}
A range of human rights issues will continue to be prevalent. The treatment of refugees will remain on the international agenda. Sexual identity, and rights associated with sexual identity will also be important. Human rights issues associated with drugs and drug related crimes will also be raised.

Environmental law is also a growth area for litigation and this trend is likely to continue. It may eventually develop a life of its own and be separated from urban planning issues.

The aging population will bring a need for temporary and permanent migration to fill skill shortages. Expertise in migration law will be valuable.

The changes in the nature of families will create continued work in the field of family law. Issues relating to the breakdown of both traditional marriages and de facto relationships will grow.

The aging population will also mean that expertise in “elder law” issues will be needed. This includes such issues as pensions, financial management, estate planning.

Present trends indicate that 21st century law practice will rely increasingly on assisted negotiation and multidisciplinary models to manage conflict and resolve disputes, with an emphasis on early intervention strategies. Lawyers who are expert in the full range of conflict management, dispute avoidance and dispute resolution methodologies will have a competitive edge.

Case Study: Austsolve

Austsolve is an arbitration and mediation service that brings together 23 of Melbourne’s most senior commercial litigators from eleven firms. Austsolve will act as a referral service for its members and plans to offer several types of alternative dispute resolution, including mediation, with an emphasis on arbitration. A simple arbitration service would provide a result within six weeks. The cost of the service ranges from $2000 to $4000 per day.

Changing Workplace Models

In the last 10 years, the percentage of female solicitors in New South Wales has grown from 20% to 33%. Women account for over half current law school enrolments. The rise of women in the legal profession is having a significant affect on workplace culture and values. Issues such as family friendly practices, flexible working arrangements, outsourcing to temporary contract lawyers, equal opportunity and merit based advancement are high on the agenda.

The legal profession is also a relatively young one: for example, 47% of solicitors in New South Wales are under 40. The new generation of lawyers come from “Generation X”. While broad generalisations will never hold true for the entire group, generally speaking this generation will not be shackled to a single employer, has no fear of temporary employment and values leisure and freedom more than status.

This generation also does not flourish in a hierarchical environment - yet the two most hierarchical environments are legal and accounting practices, where clear distinctions exists between partners, other fee earners and other personnel. Generation X is likely to demand a different style of workplace and more balance between career and life.

A detailed discussion of workplace issues can be found in Chapter 6.

**Case Study: Harmer Workplace Lawyers**

Harmer is an employment law firm whose philosophy is based on fair treatment and balance in lifestyle. Key objectives of the firm include: to be a leading law firm; to achieve fairness in the workplace; and to achieve best practice in its own workplace. Everyone who joins the firm is inducted with these principles. All employees are on profit share and have a say in the running of the firm. Profit share is worked out on the quality of contribution and competency. Performance appraisal occurs through consultation with others working in the area. Performance is not based on quantum of fees.

The firm is continually audited and benchmarked by its consultants. On Friday, all staff receive a massage and yoga sessions and meditation classes are available at lunchtime. The firm meets every fortnight and there is full information exchange. Self-discipline and self-growth are encouraged. Competition amongst employees is not.

By sponsoring academic prizes in universities in areas such as human rights and employment, links have been developed with the universities and top students who are interested in these areas. Consequently, the firm has found that it is in high demand from top students. Four hundred applications were received last year from potential summer clerks.

Harmer currently has 60 employees and the firm has been established for five years. It has a very high retention level amongst employees. It has also received an Australian Institute of Management Award in recognition of its outstanding contribution to human resource management within the legal profession.

**Access to Justice**

The courts are overburdened, litigation is financially beyond the reach of practically everybody but the affluent, the corporate or the legally-aided litigant; governments are anxious to restrict expenditure on legal aid and the administration of justice. It is not an overstatement to say that the system of administering justice is in crisis.

Governments have engaged in a range of “law curtailing” legislative activity in an attempt to cap their expenditure on the justice system. This includes limiting common law rights, capping damages payments and seriously curtailing rights to take action under administrative law procedures. The result is a general shrinkage in compensation work. In the criminal field, the rise in guilty pleas may result in less work as the number of trials decreases.

The cost of justice is rising and unlikely to be reduced. At the same time, the user pays philosophy has had a significant effect on legal aid. In real terms, Commonwealth funding has been significantly cut over the last 5 years. The

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174 Ashby, *op. cit*

Commonwealth Attorney-General has noted that “legal aid has never been, and will
never be, available to everyone. It is a means of providing legal representation for
the most needy members of the community, not of generally funding people’s private
disputes.”\footnote{Commonwealth Attorney-General’s Press Release No 747, 27 April 2000}
In this context, it is expected that access to legal aid will become more
limited outside the criminal law area. Legal aid funding for representation before
tribunals has been hit hard.

As legal aid budgets shrink, unrepresented litigants are becoming increasingly
prevalent. In the Family Court, 37% of contested cases involve at least one
unrepresented party. Even in the High Court, 27% of litigants seeking Special Leave
to appeal are unrepresented.\footnote{Wockner, Cindy, “Pros and cons of legal charity”, Daily Telegraph, 19 March 2001, p20}

According to a Griffith University study,\footnote{Dewar, Smith and Banks, Research Report on Litigants in Person in the Family Court of Australia, Griffith
University, May 2000}
the increasing number of unrepresented litigants in the Family Court has resulted in increased injustice and case backlogs.
Unrepresented litigants are more likely to have limited formal education, limited
income and assets and no paid employment. One judicial interviewee cited an
example of a single unrepresented litigant who had taken up 19 days of court time on
a matter that should not even have gone to court.

Lack of representation also compromises justice itself. In 59% of cases reported in
questionnaires completed by judges and registrars in the Griffith University study, it
was thought that the unrepresented party was disadvantaged by the lack of legal
representation\footnote{Ibid} Unrepresented litigants in criminal proceedings create particular
problems for prosecutors, whose role is not to “win” but to ensure justice.

A number of possible scenarios arise. The first is that governments will recognise
that adequate legal aid is in fact cheaper for the public purse than increasing the
number of courtrooms and judges to deal with longer and longer cases.
Alternatively, there will be an increased spending on courts and court infrastructure,
delays will continue and the overall cost of the justice system will rise dramatically.

Courts are looking for ways of dealing with the rising number of unrepresented
litigants within current funding constraints. One methodology under consideration is
changing the practices and procedures of courts to make them more accessible to
non lawyers. While this approach has been used for some time in small claims
jurisdictions and other similar “consumer” tribunals, its extension to courts is now a
reality.

\footnote{Ibid}
CASE STUDY: FAMILY COURT SELF REPRESENTED LITIGANTS PROJECT

The Family Court has launched a project to develop processes to assist self represented litigants, who now account for 37% of Family Court parties. The aim of the project is to develop a national approach to provide services that are fair, open, consistent and understandable to all the courts clients.

The project team will review court practices, protocols, procedures and referral systems to make them clear, understandable and relevant to a person of average literacy. Initiatives to be explored include producing pre packaged materials and establishing touch screens in court registries. Court procedures and terminology (including legal terminology and rules) are also to be reviewed.

LEGAL AID AND PRO BONO WORK

Whatever the truth may be, media references seldom acknowledge the Bar to be the protectors of the oppressed or the champions of the righteous. Rather the emphasis seems to be that the Bar is the institution that frustrates the doing of justice and the visiting of the powerful unrighteous with their just desserts. Such a portrayal can be reversed only if the Bar is and is seen to be available to serve the interests of clients across the range of areas in which advice and advocacy are required. I imagine it might require a significant increase in work accepted on an unremunerative or pro bono basis in areas in which the Bars services have not often been sought.

The defining characteristic of a profession is a commitment to place the interests of others before those of its members, and to act in a spirit of public service. Pro bono work is therefore an important aspect of legal practice. The fact that the profession often steps in to meet community needs that legal aid fails to address goes largely unrecognised in the context of the poor image of the profession portrayed in the press.

The establishment of a national Pro Bono Taskforce was announced on 13 October 2000 by the Commonwealth Attorney General. This initiative followed on from the First National Pro Bono Law Conference convened by the Attorney General in August 2000. The Taskforce Report of June 2001 proposed a five point pro bono action plan:

1. establishing an Australian pro bono resource centre;
2. producing a best practice handbook for managing pro bono law;
3. supporting client focussed research;
4. developing national professional practice standards for pro bono services; and
5. fostering a strong pro bono culture in Australia.

As a result of this Report, proposals have been sought by the Attorney-General from interested groups or organisations to host and run a National Pro Bono Resource.
Centre to facilitate pro bono practices and enable the collection and exchange of information. The 2001-2002 Federal Budget includes one million dollars over four years to support the outcomes arising from the work of the Taskforce. A substantial proportion of the funds is expected to go towards establishing and running the Centre.

According to a former High Court Judge, the decline in the standing of the legal profession correlates with the profession's shift from “social trustee professionalism” to “expert professionalism”, and the increasing commercialisation of law. He believes that, as the professions are no longer seen as having a special responsibility to serve the community, they cannot speak with the authority that they previously commanded.

Nevertheless, Australian lawyers continue to contribute a significant amount of time to pro bono work. According to the latest Australian Bureau of Statistics study on the legal services industry, Australia's solicitors performed an average of 71 hours pro bono work each in 1998-99. Barristers performed an average of 132 hours pro bono work during the same period. Courts around the country are increasingly approaching professional associations and requesting their co-operation in developing new legal assistance schemes and these associations are responding positively to the requests. For example, in 1999 the Federal Court in co-operation with the Victorian Bar developed its own Legal Assistance Scheme, which is now enshrined in an Order of the Federal Court Rules (Order 80). The New South Wales Bar Association, as well as participating in legal assistance schemes in the Supreme and Federal Court, has also developed duty barrister arrangements with the New South Wales District Court, Local Court and the Australian Industrial Relations Commission.

In addition, the Victorian and New South Wales Bars have also developed their own legal assistance schemes to organise and formally screen and refer to participating barristers the large number of requests for pro bono assistance that are received by these organisations from members of the public.

Lawyers also participate in independent specialised organised pro bono schemes such as the Public Interest Law Clearing House (PILCH). PILCH in Victoria is a specialised pro bono referral service. It draws its members from across the spectrum of the legal profession, including private law firms, the Victorian Bar, corporate legal departments, community legal centres and university law schools. PILCH aims to co-ordinate and extend the provision of legal services done on a pro bono basis or at a reduced fee for non-profit organisations and disadvantaged or marginalised members of the community. Its focus is to provide legal assistance in matters of public interest. A similar organisation by the same name also operates in New South Wales. Availability of pro bono work is also seemingly one important factor in attracting young graduates. It appears that Generation X is more interested in the possibility of doing interesting, intellectually stimulating or socially valuable work than earning huge salaries. One of the things that young lawyers now look for when

186 Australian Bureau of Statistics, August 2000, op.cit
applying for jobs is whether a firm has a pro bono scheme, because it indicates that the firm has a social conscience.\[187\]

The erosion of legal aid funding, and the legal profession’s objections to this, are well documented. If legal aid budgets continue to shrink, within ten years legal aid offices will be acting solely as under funded public defenders offices. Furthermore, the restrictions involved in seeking legal aid have led to many people simply not applying.\[188\] There has also been a decline in the number of firms willing to undertake legal aid work in family law matters, caused by a combination of low legal aid rates, difficulties in dealing with Legal Aid Commissions and the decrease in the number of grants made.\[189\]

While pro bono work is an important aspect of legal practice, it is important that it is not used as a means of propping up inadequate legal aid budgets. Lawyers are not prepared to undertake more pro bono work to make up for inadequate legal aid funding. A study by the Justice Research Centre found that more than half of the legal aid cases handled by private solicitors were subsidised by the firm. This included firms incurring disbursements (such as barristers’ fees) that were not covered by the grant, and the solicitors spending more hours than could be claimed from legal aid. The subsidy amounted to at least 45% of the cost of the case in the majority of cases examined.\[190\]

In this context, there has been a concerted push by governments for the profession to increase its commitment to pro bono work to cover those who are no longer eligible for legal aid under current criteria. The Victorian Government has indicated that firm commitment to pro bono work will be a criterion in determining the composition of legal panels for outsourced government work.

Case Study: probono.net\[191\]

Probono.net is an online legal community designed to allow collaboration, communication and networking between legal practitioners working in academia, private practice and public legal services and interested in pro bono work. Launched in 1998, it originally focussed on New York City. Since that time the network has expanded across the country, including local networks in Los Angeles, San Francisco, Georgia, Hawaii, Illinois and Maine.

The mission of probono.net is twofold: to increase the amount and quality of legal services provided to low income individuals and communities through innovative use of technology and to create a virtual community of public interest lawyers. While probono.net is principally a lawyer to lawyer network, the principal goal is to deliver the best legal services to clients.

Local networks develop their own collaborative practice areas. Areas are devised and maintained by public interest legal groups and their volunteer lawyers, performing tasks such as updating the news and calendar pages, listing new cases that need attorneys and screening area members. Websites will include such materials as bulletin boards, a library of precedents, a calendar of events, case descriptions and a “clearing house”. The staff of probono.net assist the different practice areas in organising, consulting with practice area leaders and ensuring the information is up to date and accessible.

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\[188\] Cooke, 5 August 2000, op cit

\[189\] Hunter, Rosemary, Legal Services in Family Law, Justice Research Centre, December 2000, pxvii

\[190\] Ibid, pxvi.

\[191\] See http://www.probono.net
The Place of Lawyers in Society

I was confirmed in my conviction that it was not impossible to practise law without compromising truth. Let the reader, however, remember that even truthfulness in the practice of the profession cannot cure it of the fundamental defect that vitiates it.192

Sydney Silk and former NSW Attorney-General Jeff Shaw QC has observed that “lawyers, as a class, are not loved”. There is a sense of general community dissatisfaction with the cost and increasing complexity of justice. Those who can afford a lawyer are acutely aware of the costs and time involved in resolving issues through traditional legal process. Those who cannot afford a lawyer are increasingly unhappy with the system.

The New South Wales Director of Public Prosecution has said publicly that many non lawyers see the Australian legal profession as “expensive parasites”.193 While an examination of the actual earnings of the majority of lawyers belies this, it remains a widespread misconception that needs to be addressed. It is based at least in part on an erroneous view that the (much publicised) earnings of high flying solicitors and barristers reflect the general earnings of the profession.194

The self oriented approach discussed in Part A of this Chapter also translates into dissatisfaction with anything other than a complete victory in legal proceedings. The law and legal profession have increasingly faced condemnation and hatred from those it has failed to satisfy. “In this climate, if people hear nothing but continuous vilification of the legal system, they begin to believe the rhetoric.”195

This general dissatisfaction with the legal system in the community translates directly into the level of dissatisfaction of lawyers themselves. The legal profession is increasingly concerned about its public image. In a survey of Canadian practitioners, 20% of respondents identified the profession’s image as the major issue facing lawyers today.196 The public service aspect of law is an important part of legal practice for many lawyers. Cuts in legal aid budgets have severely curtailed opportunities for the profession to engage in altruistic activities.

American Scholar Professor Rhode has observed that, throughout history, the legal profession seems to have been permanently in decline. Commentators have been remarking on the lowering of the standards of the profession for over two thousand years. As Professor Rhode concluded, “if there had been a fall from a state of grace by the profession, it must have occurred at a very early stage in its history”.197 Lawyers simply seem to be a class that many people “love to hate”.

This is supported by surveys showing that those dissatisfied with the profession are largely those who have not actually been clients of lawyers. For example, a survey of clients in New South Wales, South Australia, Tasmania and the Northern Territory

192 Mahatma Gandi, quoted in Fox, op.cit
194 Shaw, December 2000 op.cit, p70
197 quoted in Gleeson CJ, “Are the professions worth keeping?”, Greek Australian International Legal and Medical Conference, 31 May 199931 May 1999, op.cit
showed that the vast majority (83.8%) of clients was either satisfied or very satisfied with the legal services provided.\textsuperscript{198} Similarly, in a survey of 300 clients conducted by the Victorian Legal Ombudsman, 71% of respondents rated the service they received as good or very good compared to only 7% who rated the service poor or very poor.\textsuperscript{199}


\textsuperscript{199} Farrant, Darrin, "Lawyers get seal of approval", \textit{The Age}, 23 July 2001, p7
3.5 **SCIENCE AND KNOWLEDGE**

As science and medicine move ahead at sprint pace, the law limps along behind.\(^{200}\)

The information revolution is shifting the focus of wealth creation from machines to individual skills, knowledge and innovation. It completes a circle that started with the industrial revolution, where human power was replaced by machine power.\(^{201}\) This revolution will have profound effects on the world in general, and subsequently on law and legal practice.

A **Trends**

*Science and Humanity*

Medical science has already developed tests for 117 different genetic conditions, including Alzheimer’s disease, colon cancer and Huntington’s chorea.\(^{202}\) The head of the US National Human Genome Research Institute predicts that within 10 years there will be genetic tests to predict a propensity for diabetes, heart disease, mental illness, common cancers and other human characteristics such as aggression and sexual orientation.

Within 40 years, gene based drug treatment will be available for most diseases and average human life expectancy will reach 90 years.\(^{203}\) Medicine will be individualised, with the efficacy (or potential toxicity) or a drug on an individual determined by a simple blood test to look for gene markers.\(^{204}\)

Many social, ethical and legal problems will arise from this project, including protecting the confidentiality of data, the scope for patenting life forms and the sharing of the benefits of the research. There is also the possibility that genetic data will be used to alter the makeup of the human species. "Few questions of human rights could be more fundamental than who the future human beings will be."\(^{205}\)

The possibility of human cloning is now within the reach of medical science. One method involves splitting an embryo to create further identical embryos, a second uses cells from a developed human being to create other identical individuals. There is also a suggestion that cloning could be used for the sole purpose of providing spare body parts.\(^{206}\) Other breakthroughs such as the use of non human tissue for transplantation to humans (xenotransplants) raise ethical issues for humanity.

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203 Kirby, Justice Michael, “Engines of Progress Pose Incredibly Complex Challenges”, *The Australian*, 16 March 2000, p13
204 Lavelle, Keren, “Advances in genetics leave the law behind”, *NSW Law Society Journal*, October 2000, p57
205 Kirby J, Autumn 2000, op.cit
206 Connell, op.cit
The Ideas Millennium

A new perspective on knowledge in organisations is being created. Organisations are viewed as bodies of knowledge, and knowledge management is considered an increasingly important source of competitive advantage for organisations. The special capabilities of organisations for creating and transferring knowledge are being identified as a central element of organisational advantage. Knowledge embedded in the organisation’s business processes and the employee’s skills provide the firm with unique capabilities to deliver customers with a product or service.207

We are currently living through profound social and economic changes. Dealing with change requires creativity. In such an environment, success is likely to be related to the ability to come up with new ideas.

Knowledge and ideas are now effectively worth considerably more than tangible things. The value assigned by the stock market to fledgling IT companies with no real assets or income and huge current losses demonstrates that ideas are already worth more in the marketplace than real assets. By way of example, in 2000 the world’s largest retailer, WalMart stores, was capitalised at $US250 billion, or about 2.5 times Yahoo!, Walmart’s turnover was more than 80 times the annual level indicated by Yahoo’s sales figures.208 Similarly, Amazon.com has never made a profit and does not expect to do so until at least 2003.209

The year 2001 saw significant “corrections” in the dotcom market and the demise of many of the more questionable dotcoms. However, those with genuine market potential have survived, albeit at a more realistic market value. The recent development of a “Biotech Index” in a number of markets also illustrates the trend towards investment in ideas, and the potential for ideas, over traditional industries.

B Threats and Opportunities for the Profession

Growth Areas

The value of scientific discoveries will lead to a continued growth in intellectual property. There are already about 100,000 genes identified and more than 10,000 patent applications have been filed with the United States Patent and Trademark Office.210 Internationally, patents are pending or have been granted on more than 500,000 genes and partial gene sequences in living organisms.211 If law firms take the opportunity to move into patent practices, an understanding of human genetics, biotechnology, chemistry and other sciences will be useful.

207 Gottschalk, Petter, ‘Use of IT for Knowledge Management in Law Firms’, 1999 (3), Journal of Information Law and Technology (JILT)
211 Meek, James, “Race to patent genes ‘out of control’”, Canberra Times, 16 November 2000, p12
The biotech team at Clayton Utz has gone from four to 23 lawyers in 18 months. Many of the new recruits have both law and science degrees.

The biotech practice is diverse, including advice on research and development taxation, capital raising and dealing with interest groups on issues such as genetically modified food, as well as the more traditional work of patent applications and licenses.

According to Russell Berry, head of the Clayton Utz Intellectual Property team, the increasing level of government regulation of genetic experiments on humans, plants and animals has created a greater need for legal advice by both government and industry on the scope and application of such regulations.

As genetic testing becomes more advanced, human rights issues such as privacy and discrimination will become important. Information about predisposition to particular diseases may be used by insurers to set higher premiums or not provide cover at all. There is currently no law in Australia preventing an insurer compiling a database of genetic information, or even preventing a company from forcing a potential client or employee to undergo genetic testing. In a recent survey of support groups for people with genetic disorders conducted by the Australian Association of Superannuation Funds of Australia, 143 respondents reported discrimination including being refused life insurance, paying higher premiums, difficulties in accessing income protection insurance or having superannuation or travel insurance affected.

Advances in reproductive technology also create legal issues. Discrimination in allowing access to new technologies in Australia has already led to court action and Federal Government intervention. The rights of children to know about their biological parents will also remain an issue.

Mergers and acquisitions will continue as small, cutting edge dotcoms and biotech companies are bought out by larger, conventional operators. Lawyers will also be needed with expertise in financing, joint ventures and venture capital.

Knowledge as a Commodity

The successful digital lawyer is one who knows that he or she is in the information business as much as in the legal business, and that while automation often means that “time is money” in law practice, the more important insight is that “information is money.”

The legal profession is knowledge intensive, and advanced technology opens up the possibilities of transforming the industry into the cutting edge of the future.

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214 In Bain v Victoria it was held that legislation restricting assisted reproductive technology treatment to women who were married or living with a man in a de facto relationship, was inconsistent with the Commonwealth Sex Discrimination Act, and as a consequence, was invalid under section 109 of the Constitution. The Federal Government has decided to amend the Sex Discrimination Act so as to permit any State to legislate to restrict access to assisted reproductive technology.
215 Aresty, op.cit
Knowledge management underpins ecommerce, and the client of the future will see effective knowledge management as a critical part of its operations.

All employers and employees in legal practices need to improve their knowledge management skills. This means “the leveraging of a law firm’s collective wisdom by creating processes and technology systems to support and facilitate the identification, capture, dissemination and use of the knowledge of lawyers and staff”.

The use of technology to creation of knowledge management tools can have applications that extend outside the law firm and create new business opportunities.

**Case Study: Virtual Lawyer – Advertising**

Virtual Lawyer – Advertising is a web based expert system developed by Blake Dawson Waldron for Unilever that checks the legality of draft advertising copy. After writing advertising copy, the author can open Virtual Lawyer, run through a preliminary checklist, receive a preliminary legal opinion and make any necessary changes to the advertisement. A full summary is then provided to Unilever’s general counsel for the advertisement to be signed off. The system cost Unilever between $50,000 and $60,000 and allows advertising copy to be signed off in 24 hours instead of two or three days.

Blakes have also developed virtual lawyer systems for price exploitation, GST and customer complaints.

The most significant asset of law firms is the collective knowledge of the firm. It will be imperative for the profession to utilise technological advances to capture this knowledge. Expert systems and artificial intelligence techniques help lawyers bottle up their knowledge assets for use by themselves and others. They also allow lawyers to better assist those unable to afford legal services and to educate the community about legal matters through well designed Websites.

**Case Study: Mallesons Stephen Jaques**

In 1998 Mallesons identified knowledge management as a key area for investment and appointed a Director (‘Know How’). Mallesons now has a 60 person group devoted to this field. The Group has absorbed divisions such as libraries, precedents and technology training and each practice group has a designated ‘Know How Representative’. It is also responsible for issues such as legal knowledge, client relationships, strategy and processes.

The development of the Mallesons “instrument panel” has been a central focus of the Group. The tools available include individually customised news summaries delivered daily and a precedents database (including notes on when to use different clauses) accessible through a toolbar in Microsoft Work. In house specialists in various areas are listed in another toolbar.

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218 Schmidt, Lucinda, 23 February 2001, *op. cit.*, pp82-3
Science and the Law

Not to do anything is to make a decision, to accept that science and technology may take our societies where their imagination wants to...without international rules, in genomic regulation, as with nuclear fission and Internet regulation, national laws can never be fully effective.\(^{219}\)

We live at a time when advances in technology and science have provided opportunities to expand human knowledge and human capabilities. These developments present great moral questions and a huge challenge for the law. As Justice Kirby has pointed out, “to afford the long term protections that were apt for the steam engine or technology of the 19th century is not really appropriate for the rapid pace at which technology is advancing and the very large implications it has for the whole of the species”.\(^{220}\) The use of DNA will transform aspects of law enforcement and criminal litigation previously governed by advocacy skills to forensic exercises.

The use of the law for extensive patenting of genetic material also raises social issues. If the trend continues at its current rate, in a few years basic information will be privatised, and medical researchers will have to pay hefty licence fees to “gene squatters” in order to develop new pharmaceuticals.\(^{221}\) The question of how the economic benefits of genetic material should be shared, including whether the original “owner” of the DNA should be compensated, will need to be addressed.

As the boundaries of science expand, so do the resulting legal and ethical issues. If uniform national approaches are not developed, it will be left to individual judges to fashion the law through applying common law principles developed long before new technologies are developed.\(^{222}\)

Continuous Learning

In a world changing by the minute, lawyers must be prepared to manage people and businesses using problem solving tools from a variety of disciplines. As professions converge, law degrees will be increasingly combined in less conventional groupings with other disciplines.

After law school, lawyers will need to focus on continuous learning to survive. The pace of change and rapid internationalisation of laws may mean that a significant proportion of what is learned in law school today is irrelevant ten years from now. The most important skills will therefore be understanding how to keep up to date and how to apply new ideas laterally.

A key issue facing law societies and bar associations will be how to assist practitioners with limited resources or in remote areas with the process of continuous learning. Developing new and innovative methods of delivering continuing legal education will be part of this process.

\(^{219}\) Kirby, Justice Michael, “The Human Genome Project”, speech given at Symposium 2001 quoted in Proctor, April 2001, p12

\(^{220}\) Quoted in Lewis, op.cit

\(^{221}\) Meek, op.cit, p12

\(^{222}\) Connell, op.cit
### Case Study: DIY Ethics Courses

The New Zealand Law Society's Continuing Legal Education Committee has developed a series of video based, guided courses examining a range of ethical dilemmas arising in particular areas of practice.

The program is totally portable and not dependent on the availability of a specific presenter. The design reflects the intention that law firms and groups of practitioners or individual lawyers should run their own seminars.

Those undertaking the course participate through a series of questions examining ethical issues from a number of perspectives. Participants can also raise issues that they have faced in practice.

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223 “DIY legal ethics courses available”, *Law Talk*, No 562, 4 June 2001, pp4-5
3.6 SUMMARY OF CHALLENGES

A CHALLENGES FOR INDIVIDUAL PRACTITIONERS AND FIRMS

Potential Growth Areas of Practice
- Ecommerce, cyberlaw and related fields.
- All aspects of international commerce, including trade law, mergers and acquisitions, taxation and capital financing.
- Intellectual Property: both defending old rights and creating new ones.
- Biotechnology and other science and technology related legal work.
- Dispute avoidance and risk management.
- A range of human rights issues, such as refugee law, gender discrimination and privacy.
- Work in the Asian market.

Potential Declining Areas of Practice
- More routine aspects of law may be commoditised. Transactional legal services will be provided in standardised forms electronically both by the legal profession and non lawyers. The profitability of transactional law may decline.
- Legal aid funding is unlikely to be significantly increased, leading to ongoing pressure on practitioners who work with clients who fail to meet legal aid guidelines, or who need more assistance than can be funded via legal aid.

Potential Changes to Ways of Practice
- Ensure that the focus of legal practice is on the needs of clients and on providing a value added service.
- Consider billing practices based on value, not hours.
- Consider how to use technology to free up time, including using changes to the role of paralegals and legal secretaries. Develop websites that go beyond a digital brochure. Consider developing secure '4th generation' websites and extranets for individual clients.
- Consider the effects of the convergence of services, particularly in the business advice area.
- Consider options for specialisation and niche marketing, along with the development of formal and informal networks, both nationally and internationally.

B CHALLENGES FOR PROFESSIONAL BODIES
- Working to free up market access, especially in Asia.
- Ethics - and how to ensure ethical principles are applicable to lawyers in all employment situations.
- To obtain sufficient funding from governments to allow the justice system to work adequately and fairly for the financially and socially disadvantaged.
- Facilitating the delivery and recognition of pro bono services provided by the profession.
- Looking for ways to improve the public image of the legal profession.
- Assisting in development of digital signatures and public key infrastructure
CHAPTER FOUR:

EDUCATING THE PROFESSION FOR THE FUTURE

To educate people to be innovators and leaders in the real world as it will exist over the course of a career, law schools have to be ahead of the times.224

The starting point of a legal career is obviously legal education. However, legal education is not something that finishes at the completion of an undergraduate degree and pre admission requirements. Legal training is a process that begins at university and continues throughout a practitioner’s career. Legal education is a process that a practitioner must undertake continuously.

Section 4.1 describes legal education today. It commences by discussing the funding of legal education. It then goes on to provide background information, including statistics about the three stages of the training of a professional lawyer:

1. academic training at a university;
2. subsequent practical training with both institutional and in-service components;
3. post admission continuing legal education.

Section 4.2 discusses some of the key issues associated with legal education. It begins by assessing the possible impact of funding arrangements. It then examines two longstanding questions: what should be the “core” subjects of an undergraduate degree and whether practical legal training should be integrated into undergraduate studies. The section also discusses the increasing tendency for students to use law as a “generalist” degree and whether this should impact on the content of law degrees.

Section 4.3 speculates what the future may hold. It discusses the need for uniform standards of legal education in the light of the proliferation of law schools. The section also looks at possible teaching delivery methods and the future of practical legal training and continuing legal education.

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224 Henry H Perritt Jr interviewed by Joy M White (July/August 1999) op. cit
4.1 LEGAL EDUCATION TODAY

A The Funding of Legal Education

Over the past decade, legal education in Australia has undergone a period of unprecedented growth and change against a backdrop of significant cuts in Commonwealth funding of higher education.\(^{225}\)

In 1987, the first major review of Australian legal education – the Pearce Report - found that law as a whole was the most poorly resourced of all the university disciplines.\(^{226}\) Since then, the situation has further deteriorated, with current funding arrangements resulting in law students paying more for their education than virtually any other students in public universities.\(^{227}\)

Government policies on education introduced throughout the late 1980s and 1990s sought to align the higher education sector with broader economic aims and to move universities to more of a market footing.\(^{228}\)

In particular, the new vision for tertiary education expounded by John Dawkins, when he was the Minister for Employment, Education & Training, called for an expansion in the supply of places in higher education. Although little of this expansion was intended to be in legal education, growth in law was rapid and it became one of the fastest growing disciplines.\(^{229}\)

But as enrolments increased, Commonwealth funding of higher education failed to keep pace. When the Government introduced the Relative Funding Model in 1991, ‘Law and Legal Studies’ were placed in the lowest funding cluster. Law schools were seen as cheap to fund compared with other faculties within the university while demand from students for law school places was high and still continues to exceed supply.\(^{230}\) The “low cost” nature of law from an educational perspective has made law a disproportionately popular course with universities in need of additional funds. This had led to the blow out in the number of universities offering law and a consequent increase in the number of students graduating with law degrees.\(^{231}\)

\(^{225}\) Australian Law Reform Commission, Report No 89, Managing Justice: A review of the federal civil justice system, Canberra, AGPS, 2000, p117


\(^{227}\) See Simmonds, Professor Ralph, Funding for Law Schools in Australia, a Briefing Paper prepared on behalf of the Council of Australian Law Deans (CALD) for a meeting with representatives of the Law Council of Australia, Sydney, 16 December 1999, p1. Simmonds concluded that law ‘should be funded at a level higher than the 1.3 the Commonwealth’s base rate, higher even than 1.6’. CALD endorsed this view at its meeting in Perth on 30 March 2000

\(^{228}\) See Brand, Vivienne, Has there been a decline in the reform of law teaching in Australia?, unpublished paper presented at Commonwealth Legal Education Association Conference 2000, Adelaide 12-14 April 2000, p4

\(^{229}\) See Weisbrot, David, Recent Statistical Trends in Australian Legal Education, Legal Education Review, (1990-91) Vol 2 No 20, p243 where he points out that the then Minister referred on a number of occasions to the ‘over supply’ of lawyers and doctors and that the White Paper did not contain a single reference to law or legal education. Nevertheless, between 1987 and 1994, the number of law students rose by 58.7%


\(^{231}\) Priest, December 2000, (story 342), op.cit
As successive Governments have sought to reduce their budgetary commitment to higher education, major changes have taken place in the funding arrangements for legal education which have resulted in the creation of the ‘user pays’ environment for students. These changes have included the deregulation of fees for postgraduate courses which have resulted in the introduction of up-front fees for practical legal training courses; the introduction of a differential Higher Education Contribution Scheme (HECS) whereby law students pay 80.5% of their course costs and an increasing dependence by universities on the corporate sector, alumni and other sources for donated private funding.

Institutions can no longer depend on the Government to take responsibility for their long term funding needs. The reality is that this essential responsibility has been devolved to the institutions themselves and within institutions to the individual faculties and schools.

These developments have affected law schools in various ways. Although the HECS is not a market based fee in the sense of creating a direct economic relationship between law students and law schools, it can be argued that it has contributed to the increased emphasis on the educational needs of students as ‘consumers’ and has led to the students having a growing influence in the debate on the curricula of law schools.

B Undergraduate Studies

The emphasis in Australian law schools in recent years seems to have been on survival in the face of waves of funding reductions, over-enrolment by cash-strapped central administrations and increased reliance on part time and casual staff.

The enormous growth in law students over the last decade has resulted in the establishment of 29 law schools in Australia – more than double the number in 1987, when the Pearce Report concluded that no new law schools should be added to the dozen then in existence.

232 Australian Law Students’ Association, Submission to the Higher Education Review Committee, 24 April 1997, p24. Three factors were identified by the Federal Government as having influenced a law’s classification in Band 3 of HECS; actual cost of course undertaken, the likely future benefits to the individual and student demand.

233 McInnes, Cary & Marginson, Simon, Australian Law Schools After the 1987 Pearce Report, Canberra, AGPS, 1994, p21

234 Brand, op.cit, p6

235 The Pearce Report, op.cit
Table 14. Law School Growth 1970-2001[236]

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<th>2001</th>
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<td>2 (Canberra)</td>
</tr>
<tr>
<td>NSW</td>
<td>1</td>
<td>4 (all urban)</td>
<td>10 (6 Sydney; Lismore, Newcastle, Armidale, Wollongong)</td>
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<tr>
<td>NT</td>
<td>0</td>
<td>0</td>
<td>1 (Darwin)</td>
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<tr>
<td>QLD</td>
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<td>2 (both urban)</td>
<td>5 (3 Brisbane; Gold Coast*, Townsville)</td>
</tr>
<tr>
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<td>1</td>
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</tr>
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<tr>
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</table>

* Private universities

The table above represents universities offering law as a professional degree. In addition to the growth in law schools, there has also been a significant increase in the range of institutions offering “legal studies”. The principal difference between “law” and “legal studies” is that Bachelor of Law (LLB) courses are recognised by Admission Boards for admission to the profession whilst legal studies courses are not. Legal studies cover a range of law related courses, including justice administration (for police and prison warders), jurisprudence, legal studies, justice and society and business law. At this stage, eight universities offer both law and legal studies degrees[237], while three[238] offer degrees only in legal studies.

The linking of law and legal studies for the purposes of determining Commonwealth levels of funding for universities has been severely criticised. Data shows that legal studies (which primarily involves teaching law to non-law students) costs only about 60% of that required to teach law to law students[239].

The Subjects

The primary roles of undergraduate, or academic, legal education have been to introduce students to basic legal principles, to develop doctrinal research skills, to assist them in gaining an understanding of the common law method and to critically evaluate the legal system[240].

Historically, there has been an acceptance by professional admitting authorities that a law school degree satisfies the academic requirements for admission to practice[241]. This recognition of a degree has meant that law schools have conformed to the prescriptions set by the admitting authorities in relation to the designation of the compulsory subject areas to be completed in order to fulfil admission requirements.

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237 Flinders University, Murdoch University, Queensland University of Technology, Southern Cross University, University of Western Sydney Nepean, Wollongong University, Northern Territory University and Victoria University of Technology
238 Charles Sturt University, RMIT University, University of South Australia
239 Simmonds, 1999, *op cit*, p2
241 In New South Wales, a qualification from the Legal Practitioners Admission Board course is also acceptable.
However, law schools remain free to set their own compulsory core subjects for the purpose of obtaining a law degree.

Counterbalanced against this compliance with the prescriptions of the admitting authorities has been the law schools’ desire to provide a broader, multi-purpose legal education.

In order to satisfy the academic requirements for admission, as prescribed under the Uniform Admission Rules, ‘the Priestley 11’, or eleven prescribed ‘areas of knowledge’ must be covered by students during their law degrees. Understanding and competence must be demonstrated in the following areas of knowledge:

- Criminal Law and Procedure;
- Torts;
- Contracts;
- Property, both Real (including Torrens system land) and Personal;
- Equity (including Trusts);
- Administrative Law;
- Federal and State Constitutional Law;
- Civil Procedure;
- Evidence;
- Company Law and;
- Professional Conduct (including basic trust accounting).\(^{242}\)

Interviewees strongly supported the content of undergraduate education in Australia. Many noted that the strong grounding in a range of compulsory subjects made Australian graduates attractive internationally. It was also noted that the demand for law as an academic pursuit meant that law was attracting many of the brightest students, thus ensuring graduates would be of good quality. The effect that full fee paying students may have on this quality was of concern to some interviewees.

One comment made by several interviewees was that, while their understanding of the law and case analysis skills were excellent, many Australian graduates lacked problem solving and communication skills.

In Australia, the great majority of students is enrolled in combined degree programs or already holds one or more degrees in other disciplines. This places the Australian pattern somewhere between the United Kingdom model (which is predominantly undergraduate), and the model in the United States and common law Canada (which is entirely postgraduate).\(^{243}\)

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242 Professional conduct is usually deferred to a separate practical legal training course.
243 Australian Law Reform Commission, Report No 89, op cit, p116
Table 15. Undergraduate students enrolled by type of Law Studies: 1997-99

<table>
<thead>
<tr>
<th></th>
<th>1997 %</th>
<th>1998 %</th>
<th>1999 %</th>
</tr>
</thead>
<tbody>
<tr>
<td>LLB</td>
<td>8 162</td>
<td>9 131</td>
<td>9 854</td>
</tr>
<tr>
<td>BA LLB</td>
<td>5 934</td>
<td>5 789</td>
<td>6 207</td>
</tr>
<tr>
<td>BSc LLB</td>
<td>1 333</td>
<td>1 359</td>
<td>1 296</td>
</tr>
<tr>
<td>BEc/BCom/BBus LLB</td>
<td>4 671</td>
<td>5 062</td>
<td>5 738</td>
</tr>
<tr>
<td>Other Combined Degree</td>
<td>1 490</td>
<td>2 419</td>
<td>2 084</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>21 590</td>
<td>23 760</td>
<td>25 179</td>
</tr>
</tbody>
</table>

The Students

As noted in Chapter 2, the Department of Education, Training and Youth Affairs (DETYA) collects a range of demographic information about university students. This information includes information about socioeconomic status, ethnicity and disabilities. However, as already noted, the course descriptions used for differentiating law and legal studies do not reflect a split between the professional course and other courses, and universities self select which category students are placed in. This means that demographic information about students studying law as a professional discipline cannot be reliably differentiated from students studying legal studies. Information on gender is properly differentiated by the Centre for Legal Education and is set out in Table 16 below.

Table 16. Undergraduate Students Enrolled: 1997-99

<table>
<thead>
<tr>
<th></th>
<th>1997 %</th>
<th>1998 %</th>
<th>1999 %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Female</td>
<td>11 919</td>
<td>13 287</td>
<td>14 395</td>
</tr>
<tr>
<td>Male</td>
<td>9 671</td>
<td>10 473</td>
<td>10 784</td>
</tr>
<tr>
<td>Full Time</td>
<td>17 388</td>
<td>18 311</td>
<td>19 248</td>
</tr>
<tr>
<td>Part Time</td>
<td>3 067</td>
<td>3 407</td>
<td>3 590</td>
</tr>
<tr>
<td>External</td>
<td>1 135</td>
<td>2 042</td>
<td>2 341</td>
</tr>
<tr>
<td>Fee Paying (overseas)</td>
<td>594</td>
<td>553</td>
<td>583</td>
</tr>
<tr>
<td>Fee Paying (domestic)</td>
<td>0</td>
<td>420</td>
<td>651</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>21 590</td>
<td>23 760</td>
<td>25 179</td>
</tr>
</tbody>
</table>

C Practical Legal Training and Admission

The Courses

Practical legal training refers to the postgraduate pre-admission preparation for legal practice. Each state and territory has its own admitting authority that accredits tertiary law qualifications and practical legal training, both pre-requisites for admission to practise.

Practical legal training aims to ensure that students perform the key tasks and duties associated with actual legal practice. It builds upon undergraduate studies, with the completion of an undergraduate law degree being a prerequisite for entry.

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245 Ibid
Traditionally, the profession itself provided practical legal training in the form of articles and pupillage. Practical legal training is now delivered through a variety of methods, including:

- Articled clerkships (for solicitors)\textsuperscript{246}.
- Pupillage programs and Readers’ Courses (for barristers)\textsuperscript{247}.
- Specially designed institutional courses of instruction\textsuperscript{248}.
- Programs combining institutional instruction and training in employment\textsuperscript{249}.
- University law schools including clinical training as part of an undergraduate course.\textsuperscript{250}

There is no practical legal training course in the Northern Territory and those graduates unable to obtain articles to complete their legal training are required to move to other jurisdictions to complete their admission requirements. The New South Wales College of Law course is currently acceptable in the Northern Territory and the College is working with Territory authorities to develop a custom built course.

The limited availability of HECS for practical legal training has seen a dramatic change in the cost of practical legal training course in the last five years. Courses that were previously HECS liable have become full fee paying courses with costs ranging up to $9800.

The latest development in practical legal training has been the development of customised programs designed for large firms. For example, Blake Dawson Waldron has an arrangement with the Australian National University for the provision of tailored practical legal training for new graduate recruits. Minter Ellison, Clayton Utz and Freehills have similar arrangement with the College of Law in Sydney.

\textsuperscript{246} Queensland, Northern Territory, Western Australia and Victoria.
\textsuperscript{247} New South Wales, Victoria and Queensland
\textsuperscript{248} eg the College of Law in New South Wales and the Leo Cussen Institute in Victoria.
\textsuperscript{249} eg Western Australia.
\textsuperscript{250} eg Newcastle University and Flinders University. Recently a number of university law schools have also moved into the direct provision of PLT mainly in the form of ‘add-on’ programs available after the completion of LLB studies, but sometimes integrated within the basic law degree program. For example, Monash University has recently received approval to offer a postgraduate (post-LLB) PLT course. Students will be given extensive experience advising clients through a community legal centre.
Table 17. Summary of Practical Legal Training Available 2001[^251]

<table>
<thead>
<tr>
<th>Duration &amp; Description</th>
<th>Delivery Mode</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>ACT</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>ANU Legal Workshop</td>
<td>18 weeks plus 4 weeks office placement. Also now offer &quot;summer PLT&quot; for students to do over three years during summer breaks</td>
<td>Full time, part time, distance</td>
</tr>
<tr>
<td><strong>NSW</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>College of Law</td>
<td>15 weeks (30 p/t) plus 15 weeks practical experience &amp; 75 hrs distance training</td>
<td>Full time, part time, print, or electronic</td>
</tr>
<tr>
<td>University of Technology</td>
<td>18 weeks (40p/t) plus 16 weeks practical experience</td>
<td>Full time, part time, external</td>
</tr>
<tr>
<td>University of Wollongong</td>
<td>20 weeks plus 8 weeks office placement and completion of prescribed subjects at undergraduate level</td>
<td>Full time</td>
</tr>
<tr>
<td><strong>Newcastle University</strong></td>
<td>In conjunction with LLB, 29 weeks and work placement of approximately 200 hours</td>
<td>Full time</td>
</tr>
<tr>
<td>University of Western Sydney</td>
<td>In conjunction with LLB</td>
<td>Full time</td>
</tr>
<tr>
<td><strong>Bar Training Program</strong></td>
<td>3 qualifying exams, 4 week practice course, 11 months pupillage</td>
<td>Full time</td>
</tr>
<tr>
<td><strong>Victoria</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Leo Cussen Institute</td>
<td>31 weeks</td>
<td>Full time</td>
</tr>
<tr>
<td>Monash University</td>
<td>21 weeks</td>
<td>Full time</td>
</tr>
<tr>
<td>Bar Readers' course</td>
<td>12 weeks</td>
<td>Full time</td>
</tr>
<tr>
<td><strong>South Australia</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Law Society of SA</td>
<td>360 hours, 225 hours work experience, 10 hours CLE</td>
<td>Total 9 weeks full time, 33 weeks one day per week</td>
</tr>
<tr>
<td><strong>Flinders University</strong></td>
<td>In conjunction with Law Society course as part of undergraduate degree</td>
<td>Full time</td>
</tr>
<tr>
<td><strong>Queensland</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Queensland University of Technology</td>
<td>20 weeks plus 4 weeks professional experience</td>
<td>Full time</td>
</tr>
<tr>
<td>Bond University Legal Training Institute</td>
<td>15 weeks plus 15 weeks work experience plus 75 hours CLE</td>
<td>Full time</td>
</tr>
<tr>
<td>Bar Practice Centre</td>
<td>6 weeks</td>
<td>4 weeks full time 2 weeks part time</td>
</tr>
<tr>
<td><strong>Tasmania</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Centre for Legal Studies</td>
<td>26 weeks plus 12 week apprenticeship</td>
<td>Full time</td>
</tr>
<tr>
<td><strong>Western Australia</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Legal Practice Board Articles Program</td>
<td>12 months articles, 25 days tuition</td>
<td>Full time</td>
</tr>
</tbody>
</table>

Practical legal training forms the critical point at which trainees for a legal career receive their initial professional orientation.[^253]

It is intended that the practical skills taught be adaptable to widely varying practice situations. The minimum practical skills necessary for admission should be

[^251]: Centre for Legal Education, 1999; [op.cit](#)
[^252]: Committee of Australian Law Deans, 2001, [op.cit](#)
[^253]: Australian Law Reform Commission, Issues Paper 21 [op.cit](#), p59
distinguished from the later development of specialised skills at a higher level of proficiency following admission.

The Uniform Admission Rules recommend the uniform adoption of specified areas of study as part of the practical legal training program. These areas of study – ‘the Priestley 12’ – in which a candidate for admission must demonstrate an understanding and competence are:

**Legal Profession**
- Ethics and Professional Responsibility
- Trust and Office Accounting

**Professional Skills**
- Work and File Management
- Legal Writing and Drafting
- Interviewing
- Negotiation and Dispute Resolution
- Legal Analysis and Research
- Advocacy

**Practice Areas**
- Criminal and Civil Litigation
- Wills and Estate Management
- Commercial and Corporate Practice
- Property Practice

In 1997, the Australian Professional Legal Education Council (APLEC) suggested nine rather than twelve areas of practical training to be undertaken. This model, known as ‘the APLEC 9’, included competency standards but was otherwise substantially the same as the Priestley 12.

During 2001, the Law Admissions Consultative Committee (LACC) agreed to a set of competency standards for PLT. These will apply to all PLT regardless of how it is delivered - by articles, graduate diploma course, courses customised for the major law firms, and so forth. It is the intention of LACC that the competency standards form part of the Uniform Admission Rules to enable the admitting authorities to verify that students have undertaken an appropriate course of practical legal training leading to admission. It is likely that these will become effective over coming months with application to all PLT programs from 1 January 2003.

**The Students**
Most graduates undertake practical legal training and are admitted to practise. Leaving aside Articles programs and Bar training programs, 51.5% of students enrolled in practical legal training in 1998 were female. In the three Bar training programs, 29.5% of 1998 students were female. No statistics are available on the gender of articulated clerks.

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254 Whilst this prescription of the scope of practical legal training is not expressly referred to in the admission rules of any of the Australian jurisdictions, it appears that the prescription has been widely adopted for the formulation of many of the current practical legal training courses. However, they have not been applied uniformly.

255 APLEC, Standards for the Vocational Preparation of Australian Legal Practitioners 1997

256 Centre for Legal Education, 1998, *op.cit*, p77
Just over half (55%) of the 1995 graduates who responded to the DEETYA survey – the most recent figures available – indicated that a practising certificate was a prerequisite for their job. Of the 1991 graduates, 64% required a practicing certificate.

Table 18. Practitioners required to hold practising certificate

<table>
<thead>
<tr>
<th></th>
<th>1995 Graduates</th>
<th>1991 Graduates</th>
</tr>
</thead>
<tbody>
<tr>
<td>Private Legal (except paralegal and articled clerks)</td>
<td>100%</td>
<td>100%</td>
</tr>
<tr>
<td>CLCs</td>
<td>64%</td>
<td>92%</td>
</tr>
<tr>
<td>Public sector</td>
<td>23%</td>
<td>38%</td>
</tr>
<tr>
<td>Private sector</td>
<td>15%</td>
<td>51%</td>
</tr>
<tr>
<td>Private sector non legal</td>
<td>0%</td>
<td>2%</td>
</tr>
<tr>
<td>Academia</td>
<td>0%</td>
<td>22%</td>
</tr>
</tbody>
</table>

D Continuing Legal Education and Specialisation

Continuing legal education has become a very competitive field and includes courses conducted by law societies, bar associations, law schools, practical legal training institutions, private companies and law firms.

Mandatory Continuing Legal Education

Solicitors based in New South Wales are the only legal practitioners in Australia subject to a general requirement to complete a specific quantity of mandatory continuing legal education (MCLE) each year. This requirement has been in place since 1987.

All persons seeking to renew a New South Wales practising certificate are required to remain current with issues of law and legal practice by completing at least ten MCLE units of formal continuing legal education each year. Completion of the specialist accreditation process by a solicitor is deemed to be a specified course of continuing legal education to the value of ten MCLE units.

Through the MCLE scheme, the Society recognises certain activities as constituting formal continuing education (for example, seminars and workshops). However, the Society also encourages its members to undertake a wide range of formal and informal activities and to regard formal education and the acquisition of ten MCLE units each year as only a minimum requirement.

The Victorian Bar Council recently voted to support the introduction of a structured CLE program, which is to be mandatory for all members of three years and less standing. The CLE program aims to cover general issues such as ethics and advocacy and also specialist areas and topics.


258 Ibid

259 Australian Law Reform Commission Report No 89, *op.cit*, para 2.11
In other jurisdictions, continuing legal education is encouraged rather than mandated. Courses are offered by law societies, by private providers and are also provided in-house by larger firms.

**Specialist Accreditation**

Specialist accreditation schemes aim to recognise the professional standards of legal practitioners who have specialised in certain areas of practice.

Accreditation schemes are in operation in a number of jurisdictions, as set out in **Table 19** below. Generally, where an approved scheme is operating, practitioners who have not been formally accredited are prevented from advertising themselves as ‘specialists’.

**Table 19. Specialist Accreditation Schemes**

<table>
<thead>
<tr>
<th>Areas Available</th>
<th>Requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>ACT Bar</strong></td>
<td>Any field</td>
</tr>
<tr>
<td><strong>NSW Bar Association</strong></td>
<td>Arbitration, Mediation and Evaluation</td>
</tr>
<tr>
<td><strong>Queensland Law Society</strong></td>
<td>Family Law, Personal Injury Law, Mediation</td>
</tr>
<tr>
<td><strong>Tasmanian Law Society</strong></td>
<td>Mediation and Arbitration</td>
</tr>
<tr>
<td><strong>Law Society of Western Australia</strong></td>
<td>Family Law</td>
</tr>
</tbody>
</table>
4.2 THE ISSUES

A Future Impact of Funding Arrangements

The central message of the Pearce Report on Australian Law Schools was that legal education in Australia is being run on the cheap, and this is a Bad Thing. The moral for Vice Chancellors, University Councils and Governments, however, is that legal education in Australia can be run on the cheap, and this is an Absolutely Splendid Thing.260

Maintaining the Status Quo

If the Government continues to maintain – or reduce – its inadequate funding of legal education, then ultimately it will be economic rationalism that dictates future legal education policy. Considered academic and professional debate on the best way to educate a lawyer for the future will be largely irrelevant if the funds are not available to provide the teaching and training methods necessary.

The Australian Law Students Association (ALSA) has already submitted that the main factor inhibiting the ability of Australian law schools to deliver high quality legal education is a lack of funding.261 It believes that the ability of Australian law schools to provide comprehensive and effective legal education is under threat. It has listed some of the effects that income cuts have had on Australian law schools since 1996. They include:

- the forcing of institutions to increase tutorial class sizes, or in some cases, abolish tutorials;
- the reduction of full year long courses to semester long courses to accommodate resource shortages;
- a dramatic reduction in the range and number of optional subjects;
- the forcing of institutions established with a focus on the provision of student-centred learning and small group teaching to replace small group teaching systems with large lectures;
- the delay or abandonment of proposed moves to small group teaching because of insufficient funding to employ the necessary teaching staff;
- the reduction or abolition of skills courses;
- the stifling of innovative attempts to incorporate such courses within the undergraduate law degree;
- the reduction in the number of subjects required to gain a Bachelor of Laws;
- the freezing of new appointments of teaching staff or slowing down pending the availability of further resources;
- the employment of less qualified teaching staff as a cost-cutting measure;
- the shifting of the focus of assessment from the individual to group tasks, which reduces the accuracy and equity of the assessment process;
- the unavailability of computing facilities in some institutions for use by law students; others have limited or minimal access to computing facilities;

260 Weisbrot, op.cit, p219
261 Australian Law Students’ Association, Submission to the Australian Law Reform Discussion Paper 62: Review of the Federal Justice System, Appendix Funding Crisis in Australian Law Schools, an extract from the ALSA Education Funding Policy, p (2)
the absorption of specialist law libraries within general library facilities, leading to a loss of specialist law library staff, access to legal information technology resources, group meeting tables and rooms;

- the reduction of library hours;

- the transfer of administrative duties to academics as support staff are removed from law faculties. Quality of research is suffering as a result.

This position will only be exacerbated if no further funding is forthcoming.

_The Deregulation of University Fees_

One plan mooted to overcome the funding difficulties of public universities is the privatisation of the higher education sector. Whilst for the moment the Coalition Government has chosen not to deregulate the higher education sector and to introduce a loans scheme with real interest rates, there is a possibility that this proposal will again be raised in the next 10 years. Under a framework for full-fee deregulation, universities could set the prices of courses and charge fees for a proportion of them, which would enable them to redress the existing problems of high student-staff ratios, less teaching contact time, outdated technology and low academic salaries.

This proposal has attracted wide and vocal criticism. ALSA has rejected it on the basis that many law students already accrue ‘real interest debts’ in order to pay for compulsory professional admissions training programs which are not HECS liable. Apart from concerns relating to equity of access, ALSA believes that deregulation would lower the quality of legal education in Australia.262

For the moment, the imminent likelihood of deregulating the higher education sector, with all its attendant repercussions, is dormant, but the sector is always subject to federal budgetary pressure.

_The Student as Consumer_

As a result of government funding decisions, law students have become accustomed to paying for their education. The introduction of study-now-pay later HECS fees for undergraduate students, fees for postgraduate courses and fees for international students have altered law student consciousness towards a consumer orientation.263 It has been pointed out students might well be expected to call for increased teaching of subjects appropriate to the segment of the profession (private commercial practice) that is seen to attract higher incomes – especially as they are being charged in part according to their perceived likely future incomes rather than the cost of delivery of their degrees.264

_262_ Australian Law Students’ Association _Comment Pertaining to Deregulation of Universities and Its Impact upon Legal Education_. At p1. ALSA argues that Australian law schools already actively compete with each other to attract the best students – and as there is currently no substantial price competition amongst law schools, the main sphere of competition is in the provision of a quality legal education to serve the profession.

_263_ Brand, _op.cit_ quoting McInnis & Marginson, _op.cit_, p4-8

_264_ Observation by Brand, _ibid_, p7. She also notes that anecdotal evidence suggests that enrolments in electives with a non-commercial, non-practice focus seem often to be small, compared with enrolments in subjects suited to practice in a large commercial law firm.
As government funds have continued to decline, university administrators have sought to produce revenue from post graduate fee-paying students, attempting to attract these students both locally and from overseas. At the same time, overseas universities compete to attract Australian students to their post graduate courses. This field will undoubtedly become even more competitive in the future.

Another innovation has been the introduction of Australian full fee paying students, who can enrol with entry scores of up to five points less than that required for HECS based students. Individual universities determine what fees will be charged. The University of Melbourne has 309 full fee paying students, who pay $18,000 per year (compared to $5980 HECS per annum). At Sydney University, fees are $16,000 and full fee paying students represented 10% of the total 2001 law student intake.\footnote{Richardson, Jane, “The places for growth”, *The Australian*, 14 March 2001, p44}

While a mix of public and private funding will result in a wider range of options for those students able to afford them,\footnote{For example, the University of Melbourne has recently established a new two year law degree for non-law graduates, at a cost of $72,000} new problems will be created. Apart from equity of access issues, the concern is increased that the growth in fee-paying students will result in the lowering of standards, as universities may feel pressured to pass those students who have paid for their course in order to retain funding. There may be a real ‘dumbing down’ in law schools as entry standards are relaxed for postgraduate courses and their time of completion shortened\footnote{see the comment of Bradley Smith, President of the Council of Australian Postgraduate Associations, in Way, Nicholas, ‘Degrees for Sale’, *Business Review Weekly*, 28 July 2000, p273, where he states that there is already a real ‘dumbing down’ process going on – and that he would say ‘yes’ to the question that degrees are for sale.} for the sake of gathering fees.

This process may be further exacerbated if wealthy students from overseas with poor language skills and uncertain qualifications are able to obtain post graduate law degrees in Australia through the payment of fees.

The challenge for law schools in the next decade will be to ensure that academic standards are not sacrificed in the pursuit of revenue. They face the danger that the immediate threat of funding will force them to neglect their long-term interest in promoting academic excellence.

**B What should be the “Core” Subjects?**

There appears to be a general perception by practitioners that while the practice of law will be conducted in a different business environment in the future, the fundamentals of law will not change – just the skills required to practise it.

Accordingly, there will continue to be a need for law students to receive a solid grounding in the ‘core’ areas of substantive law identified by admitting authorities if they wish to be admitted to practice. With the increasing national character of the legal services market, there will also be a need to ensure that these subjects are taught at a satisfactory uniform minimum standard.
However, the perception of what should be these ‘core’ areas of knowledge will change over time, depending on the importance given to various areas of practice. For this reason, it is unwise to stipulate too categorically what should be the core subjects to be studied by law students. For the moment, it would appear from the comments of employers that completion of the Priestley 11 – which are reviewed regularly – give a satisfactory grounding for practice. However, the increasing importance being placed on environmental law, public and private international law, comparative law and intellectual property law, for example, demonstrates the changing needs of society and the areas of law in which lawyers will need to offer advice.

In the next ten years, it is clear that much more emphasis will have to be placed on the teaching of ethics at both the undergraduate and post graduate level. There is an ongoing debate as to the best way in which an understanding of ethical obligations can be developed. However, whilst the teaching of legal ethics would benefit from a clinical skills approach, it is unlikely that the limitations of existing funding will permit this development within the undergraduate program.

Nevertheless, the Law Council believes the best approach fully integrates ethics into legal education rather than compartmentalising it. Such an approach should simulate the way complex ethical questions can arise in practice, expose students to legal attitudes/values and provide the best method for fostering an understanding of legal ethical obligations within students. Ethics does not stand alone, but is interwoven with all aspects of the practice of law. The earlier that this is inculcated into potential practitioners the better cognisant practitioners will be of the fact that their professional obligations are more important than any business imperative.

C Should Law be a General or Professional Degree?

For some time Australian law schools have accepted that they have a dual mission: to provide students with a professional qualification and also to provide students with general, intellectual training. These two differing goals can lead to tension regarding the purpose of obtaining a law degree.

There has been considerable debate in recent times as to whether or not a degree in law has become the ‘new Arts degree’ of the 21st century – that is, a general degree which recognises that the study of law leads on to a variety of careers, many of them outside the law.268 This view developed as a result of the huge growth in the number of law students in the 90s and the concern that the profession would not have sufficient places to offer graduates. As a result, the role of the profession in influencing the curriculum of law schools was questioned, and a body of opinion developed that the emphasis on ‘core’ or ‘black letter law’ subjects should be lessened in favour of providing a more generalist degree, able to be exchanged across a wide range of jobs and careers.269

268 Karras, Maria & Roper, Christopher, The Career Destination of Australian Law Graduates, Centre for Legal Education, March 2000, p43
269 McInnis & Marginson, op.cit, p 235
However, a recent study of the career destinations of Australian law graduates has clarified the situation. This study, by Karras & Roper, found that the majority of law graduates do go on to undertake legal work. Overall, 80% of the graduates studied were found to be doing legal work while 20% were found to be doing non-legal work. However, Karras & Roper point out that a more precise way of portraying the situation could be to state that graduates are going to a widening range of jobs which have a significant legal element. The majority of graduates doing legal work were found to be working in the private legal profession with nearly a quarter (24%) found to be working in either the private or public sectors.

This study is likely to have a significant impact on the curricula of law schools in the future and in determining that a law degree will remain a predominantly professional degree.

**D Should Practical Legal Training be Integrated into Undergraduate Courses?**

The debate will continue for the foreseeable future as to the extent to which practical legal education should be integrated into academic legal education.

Law degrees have always included some skills training, including legal research, writing and advocacy skills. A number of the newer university law programs incorporate a substantial skill component. Two universities provide courses to cover all practical admission requirements. Monash University is now offering a separate Graduate Diploma in practical training open to graduates of other universities as well. This movement towards integration of legal skills into the academic curriculum may have a significant effect on the future structure of legal education.

In recognising their responsibility to provide the training necessary to prepare future legal practitioners, there is a trend by law schools towards increasing the proportion of time and resources devoted to ‘professional skills training’, whether through clinical or classroom-based methods. Due to the low level of resources available for law schools, as well as recognition of the importance of non-adversarial forms of dispute resolution, a trend has emerged of teaching generic ‘professional skills’, that is, skills which will be needed in any subsequent legal practice but will be equally valuable in a range of other occupations and professions.

Funding pressures must be borne in mind in considering any reforms to pre-admission legal education and training. It is commonly regarded that practical legal

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270 Karras & Roper, op. cit. This study centred on Australian law graduates who completed their law studies in 1997. The Report discusses the results obtained from the first survey of these graduates, which took place between April and July 1999.

271 Ibid p44. This conclusion was based on the graduates’ response to marking one of 27 categories which best described the nature of their employment. Work was defined as legal in nature if it could only be performed adequately by a person who held a law degree.

272 Ibid

273 University of Technology, Sydney and University of Newcastle.

training has to be intensive to be effective – and training on an applied level requires more resources than are generally available to law schools for their degree courses.

Whilst there is some experience, innovation and experimentation in Australia with the combination of practical skills training and academic training, it has not yet been established that this is a satisfactory or preferable approach.275

A fundamental source of difficulty for combined undergraduate/PLT courses is the current Federal Government policy (first enunciated in 1993) against fiscal assistance for postgraduate professional training. Where such training is introduced into a university course and is thus assisted by HECS, other faculties look jealously at the perceived misuse of funds, creating pressure to minimise the practical legal training aspects of the course.

Another issue associated with provision of practical education by an academic institution such as a university is that input from the practising profession may be minimal when compared to independent providers with greater association with the practising profession. The Australian Law Reform Commission noted that “there is a general view that there needs to be a PLT ‘bridge’ between graduation from law school and entering practice.”276 Participants in the Law Council’s March 2000 Planning Conference also concluded that:

- there is a preference for an essentially ‘end on’ model for PLT;
- PLT should be taught as late as possible to allow for student choice/maturation and association with practice;
- there must be a high level of professional involvement in PLT; and
- the PLT qualification should reflect its post graduate status.

The propensity for a practical legal training course to lose professional and practical aspects is a particular issue associated with integration of PLT into undergraduate programs. It is essential that any practical legal training course should have significant input from the practising profession. Any departure from this fundamental objective would be detrimental to the quality of practitioners entering the profession.

276 Australian Law Reform Commission, Report No 89, op.cit, page 146
4.3 The Future

A The Students

If law courses become more deregulated, the increased costs of legal education will be a disincentive for disadvantaged groups to enter the profession. Furthermore, with law students paying an increasingly higher price for their degrees, the incentive for graduates to enter community and public law practice will be outweighed by the practical necessity of the more disadvantaged students having to repay a heavy debt.

This could well have a profound impact on the profile of the legal profession. ALSA has said that it fears deregulation will reduce the diversity of the legal profession, which has slowly been developing over the last two decades. \(^{277}\) Deregulation and cost increases will also reduce the access of socio-economically disadvantaged groups to the more prestigious and longer established tertiary institutions.

The changes to the classification of practical legal training have exacerbated this problem. The rising cost of practical legal training (whether incurred through a HECS liability or through direct course fees) is a disincentive to many students to complete the course and acts as another barrier to entry to the profession for those from lower socioeconomic groups. This financial barrier to entering the profession raises access and equity issues that will ultimately impact on the profile of those participating in the legal profession.

B The Need for National Uniform Standards

The range of undergraduate and PLT courses available raises the need for a high degree of uniformity throughout Australia for admission requirements. This has been met to some extent by the introduction of the “Priestley 11” for undergraduate courses and the “Priestley 12” \(^{278}\) for PLT. However, an examination of Table 17 (PLT courses) shows a wide disparity between not only the fees required, but the time devoted to achieving the objective of providing practical training to a law graduate. By way of example, in Victoria alone, two institutions offer a course in practical legal training, both of which are offered full time but have a difference in duration of 10 weeks.

In the interests of uniformity in legal education, a close examination of the courses and content, together with the manner in which these courses are presented, should be undertaken to see whether or not a greater degree of uniformity could be achieved, particularly in relation to outcomes. This observation has greater force in view of the introduction of the National Legal Services Market where greater reliance will be placed on training received in other jurisdictions.

With all the current and anticipated changes in legal education and training in Australia, it has become essential that a body be established to oversee the maintenance of standards and provide some form of quality assurance. \(^{279}\) The form this body should take is likely to be debated for some time; time that can be ill

\(^{277}\) Australasian Law Students’ Association, *Comment Pertaining to Deregulation of Universities and Its Impact upon Legal Education*, p1

\(^{278}\) Note that the Priestley 12 is being replaced by the competency standards discussed in Section 4.1C.

\(^{279}\) Australian Law Reform Commission, *Discussion Paper 62*, *op. cit*, p56
afforded if the current, highly satisfactory legal education standards in Australia are to be maintained.

The Law Council believes that a body along the lines of its proposed National Appraisal Council for the Legal Profession, developed in conjunction with the Priestley Committee, would be appropriate.\textsuperscript{280} \textsuperscript{281}

This body, proposed in response to the development of a national transportable practising certificate and the impact it will have on developing a national legal services market, recognises that such a market demands the application of uniform minimum admission standards for local and overseas applicants, applied consistently in each state and territory to ensure the protection of the public. This body would also be able to appraise the suitability of subjects offered by Australian tertiary courses in law in order to satisfy academic and practical training requirements developed by the body.

The Law Council is continuing to discuss this proposal with LACC with a view to resubmitting an amended proposal to the Standing Committee of Australian Attorneys-General.\textsuperscript{282}

Such a body would also be able to meet the increasing concerns of law students that a quality legal education is received at undergraduate level as well as ensuring that all graduates undertaking articles of clerkship and practical legal training programs in all jurisdictions would receive the same standard of pre-admission training.\textsuperscript{283}

\textbf{C \ How Law is Taught: 21st Century Delivery Methods}

How law will be taught in the 21\textsuperscript{st} century will depend entirely on the level of funding available to law schools and practical legal training institutions.

The quality of legal education in the future will depend on the resources available to implement the most effective, flexible, professional teaching methods to teach and train lawyers to meet social, cultural and economic change. These teaching methods require investment in intensive tuition (and therefore low student/staff ratios) and the capacity to cope with the rapid growth in information technology.

There is little doubt that since skills of information literacy are now an integral part of lifelong learning skills, information technology will pay an increasing part as one of

\begin{footnotesize}
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\item \textsuperscript{280} Now known as the Law Admissions Consultative Committee (LACC)  
\item \textsuperscript{281} see Law Council of Australia, \textit{Submission to the ALRC, Issues Paper 21: Rethinking Legal Education and Training}, 29 July 1998, pp18-19 and Annexure 2  
\item \textsuperscript{282} The LACC includes representatives of the Council of Australian Law Deans and the Australian Professional Legal Education Council as well as the Law Council of Australia.  
\item \textsuperscript{283} The Australasian Law Students’ Association expresses the view that there should not be a wide-ranging disparity in course content in areas of expert knowledge which are required to obtain accreditation to practise. It believes it imperative that requisite professional admissions units are imparted to law students to a uniform minimum standard. See Australasian Law Students’ Association’s submission to the Australian Law Reform Commission’s Discussion Paper 62, p10
\end{itemize}
\end{footnotesize}
the teaching and learning strategies used to enhance students' learning outcomes. One survey has found that 30% of lawyers prefer to complete their continuing legal education requirements via the Internet. Many universities are already using the Internet to enhance the classroom experience and learning process, mainly as an adjunct to traditional teaching methods. Butterworths is due to launch an online continuing legal education service in the second quarter of 2001.

To offer diverse and innovative approaches to legal education, law libraries will have to be much better resourced to provide CD Roms, data bases and the Internet.

Long distance legal education is likely to increase in popularity as those employed in another field choose to follow a career change in law without undergoing any physical relocation or those in legal employment choose to enhance their professional knowledge. Technology is now available to assist these students study law externally. The use of lecture and seminar tapes, e-mail, computer based education modules, on-line delivery of units, universities such as the Queensland University of Technology are already using on-line discussion forums most successfully.

It is, however, already being found that there are numerous problems associated with increased reliance on information technology in the delivery of the undergraduate law program, including the financial costs to both the institution and students. There will be many costs associated with the establishment, maintenance and upgrading of the information technology infrastructure which will have to be taken into account in the future. Although in theory country and regional firms would benefit most from online services, it is the large city law firms that have the resources to facilitate on line learning. External students also have an uneven access to information technology and if geographically distant from the university, must pay for access to a reliable Internet provider.

Whilst the use of electronic mail and the Internet have the potential to revolutionise teaching, many areas of law teaching will also not be suited to delivery in an electronic format. The development of so called ‘lawyering’ skills (such as negotiation, advocacy and client interviewing) will always remain a fundamentally face-to-face process. Ideally, there will be sufficient funding available to enable a growth in clinical training methods at law school.

286 Ibid
287 McGlone & Rowell, op.cit
288 Ibid, p18
289 Byrne, op.cit, p44
Chapter Four: Educating the Profession for the Future

D The Future of Practical Legal Education

Competition from new practical legal training providers is a development that will hopefully assist in lowering the cost of practical legal training. However, it is important that standards of training are not sacrificed by the development of underfunded courses. Balancing the need for standards with ensuring entry fees are not prohibitively expensive may require intervention from a supervising body such as the proposed National Appraisal Council for the Legal Profession.

The development and promulgation of uniform national admission standards is important to ensure that practical legal training is transportable from one jurisdiction to another. However, such standards need to be developed taking into account the (competing) desire of firms to ensure that junior solicitors acquire adequate local knowledge.

The development of new, in house practical training courses in conjunction with recognised practical legal training providers may assist in shifting the cost of practical training away from students and alleviate the possible access and equity issues discussed above.

However, there is considerable discussion on the repercussions of developing in house PLT. On the one hand, if the trend towards accrediting in house practical training is limited to large national firms, access and equity issues may be created. It is also important that the accreditation process ensures that the course is not ‘firm specific’ and that the training is transportable outside the firm, and outside the state.

The principal arguments against in house PLT are:

- that the exclusion of small to medium size firms from in house practical legal training will create a cost burden on those forced to remain with the external provider, as current economies of scale will be lost. This burden will fall primarily on more disadvantaged groups;
- the risk that the uniformity, trying to be achieved through the national legal services market, will be lost with an increase in firm specific PLT. The increased mobility of practitioners anticipated by the national legal services market makes this point even more relevant.

The supporters of in house PLT point out that:

- the New South Wales College of Law (currently the principal provider of in house PLT) is already in the process of customising all of its PLT to suit the requirements of individual students and their future practices;
- any suggestion that customised PLT locks young lawyers into their current jobs does not stand up against the reality of the ease of movement of lawyers among available jobs and the very strong demand for Australian trained lawyers both in Australia and overseas;
- the College of Law itself is very conscious of the possibility of price discrimination and ensures that the cost of in house courses is comparable to its other PLT courses.

It is clear that the debate about in house PLT will continue. This also highlights the need for agreed national admission standards and PLT standards. As noted in
Section 4.1C, during 2001 LACC agreed to a set of competency standards for PLT. These will become effective over coming months with application to all PLT programs from 1 January 2003.

**E The Future of Continuing Legal Education**

Continuing legal education has an important role to play in the maintenance and development of knowledge and skills across the profession as a whole. For the young lawyer, the role of CLE is often to build up knowledge gained through university study, and to assist in the development of that knowledge in a practical, employment focussed skills base.

The need for continuing legal education will increase in the future as lawyers seek to be updated on the changing litigation process and the development of new areas of law. As already noted, CLE has become a highly competitive field and will apparently continue to be so. The increase in competition raises a range of issues, including:

- accreditation of CLE providers;
- the quality and relevance of subjects offered;
- whether there are any gaps in the range of subjects on offer; and
- whether there are any access issues that need to be addressed (including the cost of courses, and whether that is met by the employer or the employee);
- the extent to which the legal profession wishes to be directly involved in CLE.

There also remains the fact that perhaps the greatest competitors of the legal profession in Australia, namely the accountants, have much more onerous requirements for continuing professional education than even the New South Wales Law Society, indeed, up to three times more onerous. Further, the accountants are promoting their CPE as a major selling point for their professional services. While surveys show that lawyers are seen by their clients to be well trained and knowledgeable, there may be a danger that without significant and compulsory continuing legal education they will lose this apparent edge over their professional rivals. The New South Wales Law Society has recognised that problem and a task force in 2000 recommended that the amount of mandatory CLE should be increased, and that the requirements be spread over three consecutive years.
4.4 SUMMARY OF CHALLENGES

A CHALLENGES FOR PROFESSIONAL BODIES

Funding
- Monitor the effect of combining professional law and legal studies courses for Commonwealth funding purposes.
- Monitor the effect of fees on the demographics of law graduates and admissions to practice.
- Monitor the effect of restricted Commonwealth funding and full fee paying students on academic standards.

National Standards
- Continue lobbying for the creation of a national body to develop and monitor uniform national standards relating to:
  - Core undergraduate subjects;
  - Practical legal training; and
  - Uniform national admission standards.

Practical Legal Training
- Monitor the effect of the integration of PLT into undergraduate courses, and the level of involvement of practitioners.
- Consider the impact of the development of in house PLT in large firms.

Continuing Legal Education
- Consider the effectiveness of voluntary CLE.
- Monitor the quality and range of CLE available.
- Monitor the accessibility of CLE for suburban and rural practitioners.
- Consider the future level of involvement of the profession in the provision of CLE.

Ethics
- Consider methods for integrating ethics into undergraduate programs, including the involvement of practitioners.
This Chapter will examine the future of legal practice from the business perspective. Legal business structures and practices must reflect the outside world. The drivers discussed in Chapter 3 have already rapidly changed both the world and the way the world does business beyond recognition. Section 5.1 discusses four key influences on the future of law as a business:

- The changing nature and attitudes of clients;
- The convergence of service in the business sector and the rise of banking and investment houses and accounting firms as a rival provider of services;
- The increasing influence of globalisation on legal practice and the internationalisation of the law; and
- The new styles of business structures which have become possible and are likely to arise over the next ten years.

Section 5.2 discusses the future of different size businesses – small, medium and large. Comments are largely drawn from interviews with practitioners and present an ‘inside view’ from practitioners as to where they see their respective sectors of the profession ten years from now. It also discusses the future for the independent Bar and the influence of corporate counsel on legal practice.

Section 5.3 discusses a critical issue for the profession: the reconciliation of commercialism and professionalism. It examines billing practices and ethical issues as well as asking the question: how many legal professions are there now and how many will there be in 2010?
5.1 Influences on Today’s Business Landscape

A Clients

The clientele of the legal profession fall into two broad groups: individuals (including small businesses) and corporate clients. This Discussion Paper has already noted that in 2010 clients will have access to more information, and therefore be better informed. Competition and deregulation will also improve consumers’ range of choice of service providers. Clients will be more demanding, and practitioners will need to adjust to meet these demands.

There is considerable further potential role for lawyers in fields such as strategic advice, risk/problem management, dispute prevention, mediation and case appraisal. Clients are looking for ‘enabling’ lawyers, who will help them solve their problems, not just tell them what their problems are. A recent Phillips Fox client survey found that clients want their lawyers to be more proactive and business oriented in their advice.292

Case Study: CliffordChanceConnect

British firm Clifford Chance has expanded its ecommerce capacity to give its clients 24 hour a day access to a range of information customised to their individual needs. The firm already hosts a range of online subscription services and an online deal room. It has now added a 'Client Centre', housing volumes of information relevant to the lawyer/client relationship. CliffordChanceConnect also includes individual 'Matter Sites', allowing clients and lawyers to work collaboratively on projects online. An individual client can establish any number of individual Matter Sites. Access to Matter Sites can also be granted to third parties (such as expert witnesses).

According to Chief Executive Michael Bray, "by encouraging greater and more productive teamwork between clients and Clifford Chance, the new service will allow us to deepen our understanding of clients' businesses and thereby give us opportunities to find new ways of enhancing our services to them".

The Internet will be used as a powerful tool of client contact, access and collaboration for both individual and business clients. Clients will be advised over the Internet; they will be provided with direct access to their files; and they will be given simple tools to help navigate complex regulatory structures. The commoditisation of legal services will mean that value adding, or ‘experience adding’, will ultimately distinguish lawyers from non lawyers.

Case Study: legalopinion.com

Legalopinion.com is a Canadian website that allows consumers to seek legal advice online. Consumers log on to the website and submit a legal question for a fee of $39.95. After the consumer chooses an area of law, the website takes the consumer through a series of prompts to form a specific question and provide the lawyer with all the information required.

The consumer is then directed to a lawyer in their jurisdiction who specialises in the appropriate area of law. If additional information is required, the lawyer contacts the consumer directly. The site has approximately 25,000 lawyers available, who are required to respond to clients within two business days.

B ‘Convergence’ of Services and the Rise of the Accountants

…a financial institution will need to consider economic, process, intellectual technology, legal compliance, human resources and a host of other factors in evaluating [a new] business. The legal service provider who can supply an integrated and consistent response will obviously have an advantage over those who provide only a single aspect of the solution.

Twenty, even ten years ago, it was sufficient to be a black letter lawyer. Legal firms had a clear monopoly over the provision of legal services. Accounting firms, investment advisers and other groups have increasingly traversed into this territory and provided their own multidisciplinary services, and today a lawyer must be able to integrate ethical legal practice with a broadly scoped range of services. While specialist, black letter lawyers remain necessary in some fields of practice, many of today’s clients want a seamless delivery of legal services. This fact strikes at the heart of the current structures adopted by the profession, which have limited the capacity of law firms to compete with the new developments.

The worldwide push to allow multidisciplinary practices (MDPs) is part of this phenomenon. In essence, an MDP is a business in which members of more than one profession or occupation provide a combination of services for clients. For the purposes of this discussion, it involves lawyers and members of at least one other profession practising together. An MDP is more than merely a legal practice employing people qualified in other fields to provide adjunct services: this can and does already happen. The key to MDPs is that they allow lawyers to share the profits of legal practice with non-lawyers. This is generally prohibited under State and Territory laws regulating the legal profession and at this stage, only New South Wales has legislated to allow a legal partnership to share profits with non-lawyer partners.

Clients will eventually determine this matter. If there is sufficient demand for MDPs, firms practising law exclusively will become less sought after and economic pressure will force more MDP alliances. This is particularly probable amongst general legal practitioners, most of who practise in the suburbs and country areas.

296 A legal practitioner’s family may also hold shares in an incorporated practice in Victoria, South Australia, Tasmania, New South Wales and the Northern Territory.
There is an increasing integration of the legal world into the commercial world. While competition is also coming from banks and other financial service providers, accountants remain the primary competitors of lawyers in providing business consultancy services. They provide broad based business advisory services, of which law is a component. This service is extremely attractive to the business community. Most clients are much more likely to see an accountant regularly than a lawyer. Accountants also cross market services to a much greater extent, while lawyers in the past have been focussed on purely legal matters, providing niche advice services. Accountants, by contrast, do not feel inhibited in providing legal advice and accounting firms employ lawyers to facilitate this practice.

The overlap between the work of accountants and lawyers was highlighted in a recent survey conducted in Illinois in the United States. Of thirty different business services identified, only four were viewed by businesses surveyed as the exclusive domain of either accountants (tax returns and audits) or lawyers (litigation and patent protection, and a further seven as dominated by accountants (valuation, expatriate taxation and investment advice) or lawyers (ADR, labour contract negotiations, employment contracts and contracts generally). The other nineteen identified services were viewed as "shared" by accountants and lawyers. The Report notes that it is this overlap of services, rather than the wishes of clients, that provides the greatest impetus for the introduction of MDPs.

Even without MDPs, lawyers also have already expanded their practices to include non-legal activities. Some large legal firms now have departments primarily devoted to areas such as government lobbying, management consulting and patents.

Case Study: Allens Patent and Trade Mark Services
In 2000, Allen Allen and Hemsley (now Allens Arthur Robinson) expanded its intellectual property practice to include patent services to include employ three qualified patent attorneys.

According to the firm, clients are demanding a one stop shop where they can get a patent lodged, exploit the invention and have it legally defended. Allens decided it wanted to offer a full range of patent attorney service, including drafting and lodging patent applications.

The major source of work for the service has been internal referrals. Internet start-ups have been a large source of business, with one client filing at least one patent a week relating to fibre optic inventions.

C Transnational Practice
The rapid growth of ecommerce and multinational brands makes national barriers less relevant. Transnational legal practice is a wide and growing field. Business matters such as tax, corporate law, funds transfer and banking, intellectual property, resolution of international commercial disputes, foreign investment, mergers and acquisitions, communications and media law, infrastructure development and

international trade are core areas. Other possibilities include migration law, family law, refugee law and human rights.\textsuperscript{299}

Australia and other countries are reducing barriers to entry for foreign legal practice. It was thought that if Australia opened its laws to foreign lawyers, reciprocal arrangements could be obtained more easily for Australian lawyers to practise overseas. However, notwithstanding the enactment in all Australian jurisdictions except Queensland and Western Australia of the \textit{Practice of Foreign Law Bill}, there is no sign that foreign jurisdictions are becoming more accessible to Australian lawyers. The World Trade Organisation is examining the question of lower international barriers to professional services and talks on this subject are scheduled, although progress is slow. Australian lawyers who acquire admission in the United Kingdom are thereby able to practise without restriction in the European Union. The \textit{Practice of Foreign Law Bill}, which allows foreign lawyers to practise foreign law in jurisdictions that have adopted it, does enable Australian law firms to provide a broader service to clients by way of offering advice on overseas law.

The new entrants into the transnational law firm league are legal firms associated with accounting firms. Accounting firms have now identified law as a core practice area for them world wide. The “Big Five” accounting firms have established legal practices providing a combination of legal, accounting and tax services. Andersen Legal and PricewaterhouseCoopers Legal are now the third and fourth biggest legal firms world wide respectively.\textsuperscript{300} They have estimated that the world market for legal services is huge, and wish to capture a share. They also want to leverage accounting work from legal work and vice versa.\textsuperscript{301}

Different registration and licensing requirements mean that strategic alliances, rather than fully integrated transnational firms, are a common means of transnational practice. Such alliances have been common for many years in fields such as patent and trademark work. It is now expanding into new areas of legal practice.

**Case Study: Global Alliance for Ecommerce Law**

An international consortium of law firms, the Global Alliance for eCommerce Law, has been formed to meet the demand for legal services in Internet related cases. The Alliance is based in the US and has member law firms in eleven countries. The consortium’s membership is limited to one firm in each country to avoid conflict of interest issues. It aims to identify global legal issues and share information and expertise on new developments in other jurisdictions.\textsuperscript{302}

\textsuperscript{299} Bailey, David, “Reflections in Transnational Legal Practice”, \textit{Law Institute Journal}, Vol 74 No 1, February 2000, p67

\textsuperscript{300} Thomas, Tony “Globetrotter builds the all powerful legal firm”, \textit{Business Review Weekly}, 18 February 2000, p76

\textsuperscript{301} Bailey, David, \textit{op.cit}, pp65-6

\textsuperscript{302} Zampetakis, Helene, “A Clayton’s membership for internet legalities”, \textit{Australian Financial Review}, 27 July 2000, p22
D  New Business Structures

If the professional paradigm for the organisation of legal practitioners is to survive the pressures of competition policy and the introduction of multidisciplinary practices and corporatisation, the enforcement of these traditional professional obligations – both ethical duties and duties to the court – must be, and be seen to be, at the heart of legal practice.\footnote{Spiegelman CJ, 26 October 2000, \textit{op.cit}}

It has been pointed out that the legal profession has been limited by legislation to limited structures to the detriment of the future of the profession.\footnote{Law Society of New South Wales, \textit{Professional Regulation Taskforce Report}, 1997} As stated in the Law Council’s policy on MDPs, the Law Council considers that:

- The regulation of business structures should no longer be regarded as critical or necessary to the maintenance of professional standards,
- The regulatory regime should be directed to the individual lawyer who is bound by ethical obligations and professional responsibilities; and
- Individual lawyers should be free to choose the manner and style in which they wish to practise law.

There has been a strong movement within the profession in New South Wales for a relaxation of restrictive legislation to allow new practice structures, including incorporation under the \textit{Corporations Law} and multi disciplinary practices.

\textit{Incorporation}

The infrastructure costs of running a large legal practice are enormous. Expansion requires ever increasing capital. Relatively low interest rates in recent years have meant that law firms have been able to gain necessary capital from the financial sector. As interests rates rise, so too does the pressure on large firms to find other methods of raising capital.

It is this need by large firms for capital that, in part, has created the demand for incorporation. It is likely that within the next few years incorporation of legal practices will be allowed generally in Australia. Consideration of national uniform legislation raises the issue of whether the company as well as the individual lawyer should be directly subject to ethical obligations. Incorporated legal practices may be required to develop statements of corporate ethics.

\textbf{Case Study: Law Firms to List on Australian Stock Exchange} \footnote{“Law firms to list on ASX” \textit{The Legal Insider}, February 2001, \url{http://www.lexislegal.com/aus/legal_info/}}

A private consortium of investors is planning to list a national legal firm on the ASX. An advertisement in the Sydney Morning Herald in late January sought legal practices with A$10 million plus in legal fees to join the listing to form a group earning more than A$200 million. The listing is expected in October 2001 and has been made possible by changes to NSW legislation allowing incorporation of legal practices under the Corporations Law.

The same consortium is planning to list a group of 70 accountancy firms in July 2001.

\footnotesize{303 Spiegelman CJ, 26 October 2000, \textit{op.cit}  
305 “Law firms to list on ASX” \textit{The Legal Insider}, February 2001, \url{http://www.lexislegal.com/aus/legal_info/}}
Multidisciplinary Practices

As the world becomes more complex, consumers and business are increasingly demanding ‘one stop shops’ to meet their financial and legal needs. Even a relatively simple conveyancing transaction requires input from a range of professionals. Many individuals simply don’t have the time or inclination to go to several different professionals to complete a single transaction.

Multidisciplinary practices are in reality a form of business networking which sometimes occurs on a de facto basis already. For example, teams of lawyers, accountants and other advisers often work on large projects such as privatisations, major corporate insolvencies and large pieces of litigation. The coroner’s inquests into the Thredbo disaster and the Sydney to Hobart Yacht Race tragedy involved significant multidisciplinary teams. Formal and informal MDPs give lawyers the opportunity to provide associated services such as patent attorney work, investment advice, intellectual property licensing and other consultancy services. Client perceptions may well hasten the creation of formal MDPs and integrated practices.

Some forms of MDP could be of significant benefit to clients in a variety of contexts outside the corporate lawyer/accountant model that has so far dominated the debate. Modern life itself is multifaceted and multidisciplinary, and there are many situations in which clients would benefit from a multidisciplinary approach. For example, a boutique practice specialising in “Elder Law” could provide a range of integrated services such as retirement planning, estate planning, investment counselling, conveyancing, social security assistance and health related services. Such a practice could also establish a practice environment specifically designed to ensure that older persons feel comfortable and welcome. This concept can be extended to any area of practice requiring input and liaison with other service providers.

Case Study: Franchise Consulting

Deacons Lawyers plans to build on its Melbourne franchise practice by forming a company with a franchise strategist to provide merchant banking services to the franchise sector.

Services to be provided include strategic advice on corporatisation; venture capital investment banking and fundraising; franchise program development and review; and assistance with mergers, acquisitions and conversions.

Multidisciplinary practices are one solution to clients’ expectations, but they also present new issues for the profession in areas such as ethics, legal professional privilege, conflict of interest and trust account regulation. The challenge will be to ensure that client needs and expectations of streamlined service can be met without diminishing professional ethics or values. In December 1998 the Law Council of Australia adopted a policy on MDPs. The foundation of the Law Council’s policy rests on three fundamental objectives:

a) paramountcy must be placed on the maintenance of lawyers’ ethical obligations and professional responsibilities;

306 Bailey, David, op.cit, p68
308 The full text of the MDP Policy can be found on the Law Council’s website at http://www.lawcouncil.asn.au/policies.html
b) there should not be any restrictions on the manner in which lawyers choose to practise unless that restriction is in the public interest; and

c) the interests of consumers are properly protected.

The Law Council’s policy is based on the premise that it is both more effective and more appropriate to regulate individual practitioners than it is to attempt to regulate the organisations in which they practise law. This is considered an appropriate response given that legal practitioners are, as individuals, subject to a range of ethical duties, both to their clients and to the court. The Law Council policy also recommends the amendment of the Model Rules of Professional Conduct and Practice to include the following explicit statements:

1. A lawyer practising within an MDP, whether as a partner, director, employee or in any other capacity, shall ensure that any legal services provided by the lawyer are delivered in accordance with his or her obligations under the applicable legal practice legislation and professional conduct rules.

2. No commercial or other dealing relating to the sharing of profits shall diminish in any respect the ethical and professional responsibilities of a lawyer.

The Law Council's MDP policy also recommends a solution to the potential problem of legal practitioners being instructed by non-lawyer owners/directors to act in breach of their professional or ethical obligations. It recommends that State and Territory legal practice legislation prohibit MDPs by way of partnership deed, employment contract or in any other manner, from requiring a lawyer practising within an MDP to breach the lawyer’s obligations under legal practice legislation or the professional conduct rules.

Virtual Firms

The most important reason lawyers work together is not physical space, but the need to bring together expertise, have access to advice from other practitioners and share resources. All of these can be achieved electronically. There is potential for a range of virtual firms, from a conventional partnership with no specific physical location, to a small core firm relying on additional expertise on an ‘as needs’ basis.

The Internet has the potential to transform law firms from being “bricks and mortar” practices burdened by significant administrative and property overheads, into virtual practices that market, sell and deliver legal services via the Internet. Virtual alliances also allow firms offering complementary professional services to form a cyber space joint venture without physical co-location or full integration.

309 Canadian Bar Association, August 2000, op.cit, p30
Case Study: Virtual Teams

Samuel A Guiberson is a Houston Attorney specialising in complex criminal cases involving immense volumes of documents, electronic surveillance and undercover operations. His practice involves a group who is scattered geographically. He is known for his innovative use of technology and is developing the concept of using Web sites as a case management tool to synthesise virtual teams.

The Web allows him to implement the team concept across several states. Each case site holds the collective product of the entire team. This includes all case information, litigation support and logistics of all aspects of the case. The output is all briefs, preoral documents and in court presentations: everything that is needed to resolve the case. It incorporates all aspects of the case in a total continuum. The purpose is to use technology “as a means to organise people to a common task, to bring to it all the minds of the people involved, regardless of where they are physically at any time”.

Changing Management Practices

As already noted, there have been considerable changes to firm structures in recent years due to such factors as the increased use of information technology and increased emphasis on marketing.

Twenty years ago, law firms were run by Managing Partners and through partnerships of lawyers with no primary business expertise. As firms have grown, so has the development of management structures and law firms have increasingly been run as a business. This trend is likely to continue and to increasingly encroach on medium and smaller size firms.

Outsourcing is also expanding rapidly in many fields. There are already a number of companies in Australia with a very small core staff and a large number of “virtual staff” who come in and out of companies to work on specific projects. Whether there are significant cost savings depends largely on the activity being outsourced and the skill of those managing the outsourcing/outsourced activity.

Over the next ten years, it is likely that lawyers will be increasingly removed from the management of “their” businesses and increasingly affected by general management issues such as outsourcing. An increased trend towards outsourcing “non core” functions is also evident in the United States. Functions being outsourced include information technology, marketing and mailroom services. Consideration should be given to undertaking further research to examine the implications for Australian firms if this trend is followed here.

While this Discussion Paper has focussed on legal practitioners, these changes to legal practice and law firm management will also have profound effects for other law firm employees. The roles of paralegals and other support staff are likely to undergo significant change through the commoditisation of legal services.

312 Tolhurst, “Outsourcing may not be the cheapest solution”, Australian Financial Review, 6 August 2000, p15
5.2 THE INSIDE STORY

This Section discusses trends and changes in the way the legal profession is likely to conduct business over the next ten years. It is drawn from research and discussions held with practitioners, and is divided into subsections dealing with small practices, mid size practices, large practices, barristers and corporate counsel.

A The Independent Bar

An independent Bar has become an essential feature of the administration of justice in every court, State or federal. If we maintain our rights, accept our responsibilities and realise that accountability for what we do is the price of controlling our destiny, all will be well.313

An independent Bar is seen by all those interviewed as being one that will continue. Some thought that there may be a distinction between those who currently practise at the top end of the Bar and those who practise the bottom end of the Bar. The top-end, regarded by some as "high powered" areas was identified as intellectual property, tax and commercial work. It was believed by some interviewees that that area would continue to expand, and that barristers practising in this area would continue to prosper and thrive. It was also thought by some that there could be some disparity in the remuneration available to those practising in that top end area compared to barristers practising in other areas, such as personal injuries, crime and family law.

Among persons interviewed, questions were raised as to whether an expansion in "in-house" advocacy services within solicitors’ firms might affect the flow of work to the Bar in the future. This consideration was thought to apply particularly to the larger firms that were seen as having the capacity to retain advocates in-house. Not all opinions were the same, but it was felt that the development of in-house advocates ought not to have any significant impact on the future utilisation of the services of the Bar. In particular, it was noted that:

- The current court lists in the High Court, Federal Court, State and Territory Supreme Courts and the County/District Courts do not show any discernible trend away from utilisation of the services of the independent Bar by solicitors.
- The independent Bar around Australia has grown in recent years. The Bar Associations believe that one of the reasons for that is that an independent Bar is seen as advantageous to all in providing a pool of practitioners, both specialists and generalists, who can provide sharply focussed advice to clients and solicitors which, in many cases, is an attractive financial alternative to solicitors having to provide these specialist skills within their own firms.
- The services of a specialist Bar at the "top end" doing the "high powered" work is seen by all to be likely to remain in very strong demand with work in such areas expanding. This may reflect the growth in the volume and complexity of legislation and the trend towards greater liberalisation in global trade and investment.

With the trend towards greater specialisation in the law (and the growth in the volume and complexity of legislation) the existing use of the Bar by medium and small law firms utilising its specialist expertise in both advocacy and opinion work, is likely to grow. This is likely to benefit all areas of the Bar. One interviewee from a large national firm considered that this trend would accelerate because the fees of the large mega firms would compel many medium and small businesses to use the services of medium/small law firms who in turn would need to utilise the services of the Bar in order to provide the full range of services required by their clients.

There is a view that there will be a growth in direct access briefing by non-solicitor professionals, such as accountants.

In the United Kingdom, a recent Bar Council survey revealed a trend away from reliance on junior barristers in favour of the skills of more senior juniors. That review indicated that there was a growing use of solicitor advocates for less complicated work. About 35% of solicitors have that view in the United Kingdom. However, 95% of solicitors described the skill and knowledge of the Bar as good or very good and 70% of those respondents said that they supported the retention of an independent Bar.\(^{314}\) The experience in the United Kingdom is, however, different from Australia in that solicitors there have only recently secured a right of appearance in most English courts.\(^{315}\) Such rights have been available to solicitors in Australia for many years, and the Australian experience would probably reflect that the views of some of the persons surveyed are inapplicable to Australia.

The capacity for firms to develop in house advocates, however, is an advantage, in that it would be a sensible path for persons intending to go to the independent Bar to follow in their first few years of practice. It not only provides an opportunity for exposure to advocacy work, but also provides general experience in relation to litigation work, dealing first hand with client expectations and needs and the general management and culture of a solicitor's office.

Specialisation

In a post-industrial, knowledge-based economy where the intellectual capital residing in the individual is put at a high premium, it would appear that the Bar as an intellectual resource will remain in demand, and be able to meet the challenges of the future.

This is partly because barristers always have, and will continue to, provide specialised advocacy services. The ability of members of the Bar to develop and provide services in particular areas of law constitutes an important challenge for the Bar. The increasingly complex nature of economic activity, noted elsewhere, will provide opportunities and challenges to the Bar. Opportunities include the ability to provide complex legal services, such as participating in legal proceedings that span several jurisdictions, or developing expertise in areas where skills in law and new technologies and business strategies will provide practitioners with a competitive advantage. The challenges include the extent to which practitioners can develop an


\(^{315}\) This reform appears to have been less successful than expected: R. Kerridge & G Davis, Reform of the Legal Profession: An alternative Way Ahead’ (1999) 62 Modern Law Review 807.
appropriate balance of general and specialist skills, or how they may develop
specialised areas of practice while retaining sufficient connections with the wider Bar
and other practitioners.

**Business Structures**
A lawyer wishing to practise as an advocate in Australia is free to choose to practise
as a barrister at the Bar, or in partnership in a law firm. In most jurisdictions,
members of the independent referral Bars are required to practise as sole
practitioners. One of the barrister interviewees said that the desire to practise at
the Bar as a sole practitioner was very much tied in with the independence that
comes with sole practice. Sole practice also enables barristers to provide their
services in a flexible manner, as each case requires. The present flexible
arrangement with its emphasis on freedom of choice in terms of style of practice is
likely to continue.

The Bar Rules seek to maximise the disinterestedness and wide availability of
barristers as counsel and advocates and to foster specialisation. In addition to its
merits for the community locally, this specialisation supports and enhances
competition by the Australian legal profession in the globalised market for the supply
of legal services, particularly in the Pacific Rim and Asia.

**The independence and collegiate character of the Bar**
The independent Bars have always encouraged a culture of independence and
collegiality. Historically, this independence was regarded to provide two key benefits.
First, it fosters individual rights by enabling any person to obtain impartial legal
representation. Secondly, it strengthens the rule of law because the administration of
justice is conducted in a fair and ethical manner. The collegiate character of the Bar
provides the principal means by which the Bars can foster and enforce these
professional norms.

The independence of the Bar is required to meet a new challenge. The increasing
tendency of the public and the media to comment on issues concerning the
administration of justice, have exposed the legal system, particularly the judiciary, to
frequent criticism. At the same, it is apparent that some Attorneys-General are
reluctant to assume the traditional role of that office in defending the judiciary. The
independence of the Bar provides it with a secure basis upon which to assume some
of this responsibility. The extent to which the Bar may do so will depend on its ability
to maintain its collective professional values. Many of the issues considered in other
parts of this report, such as MDPs, incorporation of legal practices and the
‘commoditisation’ of legal services, have the potential to impinge on the
independence of the Bar and fragment the collegiate nature of the Bar. The ability of
the independent Bars to adapt to these changes, while preserving the collegiate
foundation that sustains its professional ethical values, constitutes an important
challenge to the Bar.

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316 The Western Australian Bar Association has recently amended its Constitution to delete references to the
criterion of sole practice.
Queens and Senior Counsel

The office of Queens Counsel or Senior Counsel has traditionally provided a means of formal recognition to members of the Bar who have attained a high standard of skill and experience in practice. Queens and Senior Counsel traditionally receive more complex and onerous work, as is appropriate for senior and more experienced members of the Bar. They also assume a leading role in the maintenance of professional standards and the administration and representation of Bar associations. Some regulatory authorities have suggested that the office or Queens or Senior Counsel does not provide substantial benefits for people who use barrister’s services and should, perhaps, be abolished.\textsuperscript{317} The independent Bars believe that retention of the office can be supported on a number of grounds, including that it marks out those with a high level of skills and experience as barristers and provides a cost effective means of dealing with complex or difficult matters. It is, however, likely that the Bars and the wider profession will be required to justify the continuing relevance of this office in the face of regulatory reviews.

Advocates’ Immunity

At common law an advocate is immune from liability in negligence in respect of the performance of his or her functions as an advocate.\textsuperscript{318} This rule was recently abolished by the House of Lords in respect of both civil and criminal proceedings.\textsuperscript{319} The extent to which this decision may affect the law of Australia is not clear, but it will stimulate a reconsideration of the immunity.\textsuperscript{320} The possible modification or abolition of the immunity will affect short term ‘business management’ issues, such as professional indemnity insurance. On another level it has the potential to significantly affect the conduct of advocacy work and the relationship between advocates and the courts.

Women at the Bar

About one quarter of each intake of new barristers are women. This is a gradually increasing percentage. It is, however, a significantly lower percentage than those entering practice as solicitors, and lower again than the percentage of female law undergraduates. Some interviewees believed that this disproportionate percentage intake was based on the perceived need for a graduate to practise as a solicitor before coming to the Bar. Some interviewees believed that there are still entrenched practices and policies that make it difficult for women to choose the independent Bar as a career path. There is, however, affirmative action in some Bars to overcome certain problems.

Many of the problems faced by women at the Bar reflect wider issues concerning equality of opportunity in the workplace. While the Bar alone cannot resolve these problems, it can exert some influence on the users of its services. A significant problem facing women barristers is the apparent reluctance of many users of legal

\textsuperscript{317} For example, in March 2001 the UK Office of Fair Trading released a review of various professions, including the legal profession. It questioned whether the office of Queens Counsel provided value to consumers. The report is available at http://www.oft.gov.uk/html/rsearch/reports/oft328.htm. The ACCC has indicated that it is considering the contents of this report.

\textsuperscript{318} Giannarelli v Wraith (1988) 165 CLR 543.

\textsuperscript{319} Hall v Simons [1999] 3 WLR 873. While the Lords unanimously abolished the immunity for civil proceedings, its abolition in respect of criminal proceedings was supported by a narrow majority of 4 to 3.\textsuperscript{320} The Standing Committee of Attorneys-General is currently considering the issue.
services to brief women barristers. The Victorian Bar has implemented a program for
the last three years following the commission of a report on the equality of
opportunity for women at the Victorian Bar. Many services have been introduced,
including an Internet based directory for women barristers\(^{321}\) and the development of
an equality of opportunity briefing policy for adoption by solicitors. This has been
supported by seminars and workshops with the users of barristers’ services,
designed to raise awareness of the problems facing women barristers and to develop
strategies to counteract those problems. The NSW Bar has commenced similar
measures.

Running a part time litigation practice can be difficult at the Bar, because courts
cannot sit part time. Obviously job sharing is not an option. Raising a young family
and practising as a barrister also provides a great challenge for women. Barristers’
practices conducted part time would generally involve advisory matters rather than
court appearances. There may need to be further assistance to women barristers in
arrangements concerning subleasing chambers for part of the time, providing an
option to part time work at home, as well as maintaining a formal presence in
chambers.

Some Australian Bars have introduced measures to assist parenting by barristers,
notably the Victorian Bar’s program of rental assistance for barristers with the care of
young children.

However, there are many women who find they are able to successfully manage a
part time practice as court advocates. This is supported by the Victorian Bar through
flexible sharing arrangements for renting of chambers. The Victorian Bar Council
supports barristers who wish to combine family care and professional practice by
making it a policy that its committees should sit at their own meeting times and
accommodate part time practitioners.

**B Small Practices**

*If lawyers do not learn to work together...not only amongst themselves, but with other
professions in a synergistic way and view things from the point of view of the
consumer, they will simply become irrelevant bit players in the digital age, looking on
from the sidelines whilst other industry group take opportunities that should have been
theirs.*\(^{322}\)

The nature of smaller and suburban legal practice is set to change markedly. Small
suburban lawyers will have to practise differently if they are to survive. Information
technology must be embraced. They must also become more entrepreneurial and
more effective at marketing their services, areas where smaller practices have
traditionally been lacking.

Nevertheless, the future is not necessarily bleak for small practices. There will
always be people who prefer to walk down the street than go into the city to see a
solicitor. The key for suburban and rural practices will be matching the size of their
practice to the size of the market in which they operate.

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322 “HTML Lawyer”, *op.cit*, p23
Using Technology

As the type of law undertaken by suburban practices is commoditised, lawyers in these practices will need to increase their knowledge of, and expenditure on, information technology. Small practices need to take advantage of technology to reduce transactional costs and compete with other providers of these services.

However, the costs of technology make it difficult for many smaller practices to make such an investment. There is an important role for law societies in assisting smaller practices in this area. This includes keeping practitioners informed of the latest developments, providing courses and seminars, and using the law society’s purchasing power to obtain competitive deals for members on such things as new technology, software and Internet access or by providing these services directly. Progressive law societies are already working in this area offering such services and wholesale practice management, marketing and conduct services to practices not otherwise able to access them.

Providing Commoditised Law

Smaller practices have traditionally been involved in a higher proportion of what could be termed “personal law”. Large segments of this area of law are becoming commoditised. Small practices in many jurisdictions have already felt the effect of competing with conveyancing companies. In fact, this financial squeeze in conveyancing was initiated amongst solicitors themselves by way of revoking advertising restrictions, before licensed conveyancers were permitted. Work has been retained, but prices (and profit margins) have dropped significantly in order to compete.

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324 Hayes, Simon, “Lawform puts its case to aid lawyers”, The Australian, 1 August 2000, p47
**Case Study: LawOnTheWeb**[^325]

LawOnTheWeb is a US site providing practitioners with a range of online tools to assist practitioners to draft customised documents and opinions without the need for specialist knowledge in a particular practice area. All documents on the site are authored by expert practitioners and are updated to take into account changes in the law.

Membership of LawOnTheWeb is free, although some features require payment. The site offers a secure online ‘filing system’ for documents created on the site. The website also offers alerts of major changes in federal or state laws, hosts discussion fora and holds events such as lectures.

**Specialisation and Boutique Practice**

While much publicity has related to the possibility of small practices providing ‘business advice’ and the accountant/legal practitioner combination, combination with other professions is also possible. Small practitioners with an interest in a particular field can also establish a practice geared specifically towards its clients’ needs and providing additional complimentary services.

**Case Study: Charles F Robinson**[^326]

Charles F Robinson is a sole practitioner in Clearwater, Florida specialising in ‘Elder Law’. His practice focuses on alternatives to deal with incapacity and avoid impoverishment.

He attempts to make the experience of coming into his office interesting and personal. Clients complete a 19 page intake questionnaire. Charles reads the questionnaire while the client watches a 20 minute video produced by the ABA Commission on Legal Problems for the Elderly. He inputs information directly into his computer and returns to the interview room to present a personalised computer presentation following up issues discussed on the video.

**Finding New Clients**

Having a niche in itself may not be enough for small practices: competition means that small practices must be able to market and promote that niche. Traditionally, small practices have not been good at marketing themselves, and may need considerable assistance from law societies and bar associations in this regard.

**Case Study: AussieCover**[^327]

AussieCover plans to offer a range of free and reduced cost legal services for a weekly membership fee of $4. Members will be entitled to a free hour of advice on any matter each year, a free will, free divorce and reduced rates on custody, maintenance and property matters. Services will be provided though a group a law firms around Australia, who will receive a set annual fee for each member for providing legal services.

The company hopes to raise $5 million in working capital through Stock Exchange listing.

**Alternative Business Structures**

Multidisciplinary practices should be examined by small practices contemplating their survival. This is particularly the case in rural areas, where the ability to share

[^325]: See [https://lawontheweb.com](https://lawontheweb.com)
[^326]: White (November/December 1999), op.cit
[^327]: “Firms unite in legal coup”, *The Adelaide Advertiser*, 4 December 2000, p59
overheads with another professional may be the difference between staying in business or not. In fact, while much attention has been given to the possibility of a "Big Five"/law firm merger, there is probably more practical reason for small businesses to consider MDPs with accountants.

The emerging strength is in “business advice”, and the accountant is often influential in choosing a client’s lawyer. Merging with the local accountancy practice will significantly expand the client base of a legal practice, which each practice can “cross sell” to the other. This cross selling is particularly important for lawyers, because while clients usually need to regularly consult professionals such as accountants, the need for legal work is often not as common.

**Case Study: Xlis**

Two sole practitioners from western England have launched a network to allow sole practitioner professionals to provide a collaborative pool of services for commercial clients. The network will be limited to sole practitioners or professionals with a small number of staff.

The two legal practitioners have collaborated for several years on commercial projects, providing commercial property and corporate advice. They are now seeking to add an employment lawyer to their team and are considering such other professionals as surveyors, accountants and management consultants.

Each network member will be able to employ other members as agents to work on different aspects of a matter. There will be no pressure on members to refer within the network, the overriding principle being the best interests of clients.

**Sharing Resources**

Finding innovative ways to reduce practice overheads by combining with other practitioners will assist small business to survive. Again, new technology can assist small practices in this area. For example, Internet technology presents opportunities for increasing communication and mentoring among small firms and sole practitioners. These developments should improve both the quality of life and economic viability of practitioners who want to provide assistance with human problems and still make a living.

Solicitors’ chambers have developed as means of allowing small practitioners to share premises and save overheads through economies of scale. They provide sole practitioners with the benefits of sole practice while retaining the collegiate atmosphere of a larger practice. Chambers usually provide access to a range of services for a fee, including reception, secretarial services, billing and information technology, allowing sole practitioner to concentrate on law instead of administration.

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The virtual solicitors chambers (VSC) has taken the concept of solicitors’ chambers one step further to allow the “chambers” themselves to exist only in cyberspace. In virtual chambers, all members are at different locations and use technology to access a centrally administered, secure database where files are held electronically.

VSC is aimed at the sole practitioner who traditionally cannot afford to operate at the cutting edge of technology. All incoming letters and faxes arriving for lawyers are scanned into the VSC system and the lawyers may then access them from anywhere. VSC also provides additional on line training and practice management services for members. On line library services and know-how will be introduced in the future. Eventually it will be possible for all accounts to be drawn up and sent out by VSC on behalf of practitioners, and there will be on line access to costs specialists.

C Mid Size Practices

Many commentators feel that the legal profession is already divided into two separate “hemispheres”, with large corporate firms making up one group, and lawyers in small firms or sole practice in the other. It has been suggested that this trend is likely to continue, and that the days of mid-size firms are numbered.

The advantage of medium size firms is that they are often able to act and adapt more deftly and flexibly than larger firms. Their disadvantage lies in the fact that they remain subject to many of the large overheads incurred by large firms but without the corresponding market power.

The ABS statistics outlined in Chapter Two show that it is the mid size firms that are struggling to make a profit when compared to the large practices. According to professional services firm consultant George Beaton, the gap between large and medium firms is growing and the middle tier firms are becoming worried as the large national firms become more aggressive. The Managing Partner of one mid sized firm has noted that “the top ten middle tier firms are likely to go to the next level and the bottom ten are likely to contract in size because they won’t be getting enough business”.

Specialisation

Boutique appears to be the way of the future for medium firms. Interviewees generally agreed that the days of the “legal grocery shop” were over. Specialisation, together with alliances with other professionals, will allow firms to provide an integrated service without a formal multidisciplinary practice. While medium sized firms will generally not be able to compete head to head with large firms in all practice areas, there is room for medium sized specialists to capture significant niche markets and quality clients in selected practice areas. Gilbert and Tobin have clearly demonstrated this fact by their work for the European Community on unbundling (discussed in Section 3.2B).

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331 Canadian Bar Association, op.cit
333 Monk, Sue, “Merger strategy for law firms”, Brisbane Courier Mail, 4 December 2000, p27
Middletons Moore and Bevins, for example, are nationalising and aiming to market themselves as a “premium lite” national firm. By aiming to be the best in their selected practice areas and being totally client focussed, they can compete with larger firms.334

Specialising in a particular client base can also be beneficial. One of Melbourne’s top twenty law firms has closed its city office and moved to the suburbs. The main reason for the move is that most of the firms’ clients (large manufacturing and industrial businesses) are in the outer eastern suburbs.335

**Nationalisation and Mergers**

Some longstanding middle tier firms are struggling to survive in the current economic climate. In the past twelve months, several of Australia’s biggest law firms have moved from being federations of state partnerships to nationally integrated firms. These firms are marketing their national financial integration and pushing mid tier firms out of some lucrative markets. Some medium sized firms have moved towards national integration in response.

Not all medium sized firms agree that national integration is necessary for survival. Gadens CEO Don McKenzie believes that the main benefit of association, rather than integration, is the retention of a close local market focus. The Gadens Group operates instead under a national brand with national precedents and a standardised structure, but with separate partnerships in each jurisdiction.336

**Alliances**

For mid size firms, smart alliances will be one way to keep business flowing in. Specialised firms will pass work on to other specialised firms as the need arises. Already, boutique firms have emerged which are devoted to arranging tenders for top end firms. Similarly, large firms who are shedding certain types of work (such as family and criminal law) are developing relationships with smaller firms specialising in these fields so that they can send clients to a specialist practitioner while still maintaining their own ongoing relationship on broader issues. The form such alliances take can range from formal, written agreements to refer clients to loose, informal arrangements. Alliances could potentially be formed to refer work to interstate/foreign firms in a similar area of practice, or alternatively to refer work locally to a firm in a different area of practice.

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**Case Study: FirstLAW**

FirstLAW is the first Internet only law firm registered in the United Kingdom. Clients register for free, and request legal advice via the Internet. FirstLAW then prepares a tender report, offering at least two firms on its panel to carry out the work. The report will outline the cost and methods of each law firm. The client enters into direct negotiations with those firms to discuss a fixed cost package.

The cost includes a commission of not more than 10% to FirstLAW, payable by the selected law firm. FirstLAW monitors the case but the work is carried out by the selected law firm using traditional face to face methods.

Over the last twelve months the FirstLAW network has expanded from 83 law firms (including two from the 'magic circle') to 300 firms (three from the 'magic circle'). According to one member of the network, FirstLAW's concentration on expertise experience and cost, not size, allowed firms "to compete on a level playing field and on a more meritocratic basis".

**D Large Practices**

There are (depending on who is asked and the criteria applied) about six to eight firms at the top end of the Australian legal market at present. The largest firms already have rid themselves of practice groups that have not commanded considerable billable hours or premium billing, such as wills, probate, family law and criminal work.

The second tier of larger firms is making much smaller profits, and must be smart to survive. Many interviewees noted that the key to staying in business in the longer term will be ensuring that the firm is placed at the very top — perhaps the top two or three — law firms. It is generally accepted that in ten years, there will be fewer players at the top of the market. The remaining firms will either merge with larger firms or shrink back. For example, Allen, Allen and Hemsley and Arthur Robinson and Hedderwicks merged in July 2001, citing the growing demand for integrated services as behind the decision to merge.

**International Mergers**

Interviewees had differing views on the possibilities of mergers with overseas firms. Some suggested that it will be critical for firms to place themselves in the top three over the next few years so that they will be well placed to connect up with a big overseas firm. Most large firms agree that they would be willing to affiliate with a foreign law firm to gain access to other markets.

The issue of the relative earnings of partners will always be important in examining the possibility of mergers. The fact that Australian law partners earn significantly less than their British and American counterparts has always been a significant disincentive to international mergers. This difference also means that Australian

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firms are currently seen as "human fodder" for the large international firms rather than serious merger possibilities.

In December 2000 it was reported in the press that Britain's fifth largest law firms Linklaters was considering a merger with Malleson Stephen Jacques, Australia's largest firm.\textsuperscript{339} While the deal has not yet been secured, it has been noted that if the merger did go ahead it would be "the most important year in Australian legal history".\textsuperscript{340}

**Mergers with Accountants**

At this stage, despite approaches, no first tier firm has shown any real interest in entering into an arrangement with one of the "big five" accounting firms. This is principally because the large firms do not perceive any push from their clients for integrated legal and accountancy services. Accountancy firms have instead turned to second tier firms to establish their Australian presence.\textsuperscript{341}

It has been accepted generally that this situation may change in the long term and that by 2010 the accountants may have worked out how to attract first tier firms. A move by one of the larger United States or United Kingdom based law firms to acquire or merge with an accountancy firm would also almost certainly dramatically change the views of Australian firms on this issue. Similarly, a third interviewee noted that when MDPs are eventually permitted in the United States and pick up first tier work, first tier accountancy/law firms will emerge.

While the large firms may not be merging with accountants at this stage, they are client focussed, and prepared to develop new businesses to meet emerging demands. Patent attorney practices, franchise consulting and other such businesses have been developed to complement legal services in particular niche fields.

\textbf{E Corporate Counsel}

Corporate counsel account for many of the legal practitioners who are not recorded in statistics about the profession. The level of use of corporate counsel was described by many interviewees as a fluctuating trend. This trend is at least in part related to the fees charged by legal practices, and the relative cost of retaining services in house. A recent survey showed that in house legal departments, while not taking work away from legal firms, are attracting better quality legal staff and paying higher salaries than before. In 1990, about 40% of legal spending of those companies with legal departments was going in house.\textsuperscript{342} This figure has now increased to 47%.\textsuperscript{343}

\textsuperscript{339} "Linklaters, Mallesons talk merger", *The Australian*, 17 October 2000, p33
\textsuperscript{340} Priest, December 2000 (story 342) \textit{op.cit}
\textsuperscript{341} Deloittes has indicated that it will continue to seek merger with a top tier firm rather than turn to the second tier.
\textsuperscript{342} Crisp, Lyndall, "In house legal sections attracting cream of the crop", *Australian Financial Review*, 30 June 2000, pp34-5
\textsuperscript{343} Bourlioufas, Nicki, "In house law departments on the rise, but salaries lag", *The Legal Insider*, 15 August 2001, \texttt{http://www.lexislegal.com/aus/news/storyBin20010815}
Corporate practice is a popular alternative to private practice. In 2000, 42% of lawyers surveyed by Mahlab stated that they would consider a move in house when considering their next career move. 58% of corporations surveyed stated that they were planning to recruit or expand their legal team with the addition of independent contractor lawyers over the next twelve months. 344

The move towards retaining top quality corporate counsel is largely a result of companies deciding that external help should only be sought where law firms are able to provide a service beyond the capability of the internal team. Corporate counsel are also cost effective: a PriceWaterhouse Coopers survey has found that in house lawyers at big companies and government agencies cost 41% of the fully loaded hourly costs of lawyers from private practice. 345

Case Study – British Telecom 346

British Telecom’s legal department has over one hundred lawyers and has been described as one of the largest legal firms in London. Solicitors practise in their specialist areas – intellectual property, litigation, corporate law and European competition law. Solicitors are organised into seven groups – worldwide, UK, disputes management, European law, intellectual property, group headquarters and mobility and strategy. All report back to the chief legal counsel. The department is informal, with open plan offices and no job titles that denote rank.

BT’s philosophy is that if it can be done better in house, then that is where it is done. This is the case with communications law – BT’s core business. BT adopts a collaborative approach when working with external lawyers and likens working on a project with being seconded to the company. When used, outside practitioners are part of the decision making process.

More than a legal job

However, life as a corporate counsel is becoming more difficult because of the multidisciplinary nature of the work. A survey undertaken by Freehills’ subsidiary, the Institute of Knowledge Development, found that legal counsel are under increasing pressure to be commercially smart, manage people and develop teams. 89% of legal counsel surveyed felt that they were expected to become business partners with the senior executive team, contribute to key business decisions and drive business strategy. 78% also said they felt they required more knowledge of global business issues. 347

These factors translate into additional stress for corporate counsel. While they feel comfortable with legal aspects of their role, they feel less secure when it comes to business acumen and people management. 348 A recent study has shown that 70% of corporate counsel with 4-8 years experience were considering going back to legal practice. Reasons cited were the quality of work, ability to do more technical work

344 Mahlab, op.cit
345 Lester, Leon “Cost giving house teams the edge”, Australian Financial Review, 17 August 2001, p49
347 Freehills Media Release, “Survey shows lawyers need more than legal expertise to succeed in business”, 22 January 2001
and the opportunity to be part of a bigger legal team, with greater legal career opportunities.  

**Relationships with Firms**

For law firms, developing good relationships with corporate counsel will be critical to retaining outsourced work. There is currently a trend towards using fewer firms and smaller panels: 60% of corporate legal work per corporation is now going to a single firm. Corporate tenders are also moving towards a “partnering” approach, aiming to create a relationship between the client and law firm which is more akin to the relationship between the business and its own corporate counsel. Understanding the nature of the client’s business and problem solving are central themes.

A recent survey by the Australian Corporate Lawyers’ Association found that the most important factor leading to the selection of a particular lawyer or firm was their understanding of the situation. This was followed by existing relationship/personal contact and the reputation of a particular lawyer. Cost was less important than perceived value for money.

**Case Study – EBilling**

Ebilling is becoming increasingly common in the United States and is being examined by Australian in-house legal departments as a means of reducing time spent on administration. Under an ebilling system, law firms send electronic bills that are then checked by rules-based software to identify exceptions. It is usually hosted either by the in-house department, or by an external company specialising in ebilling.

The system reduces time spent by corporate counsel reviewing bills and also provides corporations with a tool to clearly identify spending on outside legal counsel. Data collected can also be used by in-house departments to negotiate more appropriate fee arrangements and to assist in determining which matters would be more cost efficient to settle.

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350 Crisp, *op.cit*

351 Breusch, John, “Shape up or get out of town”, *Australian Financial Review*, 12 July 2000, p14

352 Priest, March 2001 (Story 530), *op.cit*

5.3 BUSINESS OR PROFESSION?

The society of the 21st century need professional lawyers more than ever. Pursuit of commercialism in the sense of excessive and a perhaps inappropriate emphasis on profit without regard to professionalism is not in the interests of clients.354

A How Many Professions?

If you lose your distinctiveness in any economic system, you lose your value in that system.355

The difference between a profession and a “mere” business may not always be obvious, but it is substantial. While competent and efficient service is (or should be) the outcome of a practitioner’s work whether it is a business or a profession, only in a profession is that service qualified by a wider public service.356

“Professions” have a number of particular attributes:

- they involve the exercise of some special skill not held by the general public, based on an organised body of learning, imparted systematically by an institution;
- members usually enjoy some form of exclusive right to provide their services to the public for reward;
- the profession avows obligations of service to the community, and the community accepts that such obligations constrain their pursuit of self interest;
- they are permitted, and actively pursue, a substantial degree of self regulation.357

This Discussion Paper has focussed on how changes such as technology and globalisation affect the way law is practised. However, changes in how law is practised can potentially eclipse the ethics and integrity that distinguish the profession of law from ‘mere’ business enterprises. A lawyer, above all, is an officer of the court, and the practitioner’s overriding duty to the court is the source of this distinguishing integrity.

In framing policies for the profession, its leaders must appreciate that it is dealing with a most diverse and complex constituency of interests. The large national law firm has little in common, in terms of strategic aims, with a small suburban practice. The legal profession’s leaders must have regard to the unity of the profession, otherwise it will be in danger of fragmenting.

A number of trends point towards an increasing polarisation of the profession. Interviewees commonly noted that big firms have less and less in common with suburban practitioners. The trend is towards two tiers of solicitors: one dealing predominantly with business and commercial issues, the other with the traditional role of personal legal assistance. In Sydney and Melbourne, the polarisation is virtually complete: the very large firms do no “personal” work for individuals: family,

354 Mullerat, Ramon, “Professionalism versus Commercialism: do Lawyers still want to be a Profession”, International Bar News, September 2000, pp5-6
355 Rees, op.cit
356 Brennan, 30 November 2000, op.cit
357 Gleeson, 31 May 1999, op.cit, p3
criminal, probate and other “traditional” work are the exclusive practice of smaller practitioners.

Even among these two groups, there are many subgroups, including a large number of practitioners who do not engage in what would be considered ‘traditional’ practice (either in the courtroom or in a one-on-one practice style akin to that of the family general practitioner). Different classifications include corporate counsel in corporations, freelance specialist practitioners and commodity lawyers.

Industrialisation has further transformed many legal practices into ‘crisis intervention teams’ populated with specialist technicians undertaking specialist tasks. New legal career categories include draftsperson, information/professional support officer, specialist technician, client manager, strategist and risk manager.

Corporate in house lawyers are another category of legal adviser that often does not find a comfortable home within law societies. The Institute of Chartered Accountants is introducing a “Business Professional” designation with the hope that this designation can provide a home for (among others) corporate lawyers.

The legal profession’s code of ethics underpins everything lawyers do and a commitment to these principles is the main thing that connects the varied segments of the legal profession together. This fact makes ethics one of the most important issues facing the profession over the next decade. This issue is discussed in more detail in Section 5.3C below.

B Billing Practices

Time costing has become the managing partner of the firm.358

One of the biggest criticisms levelled at the legal profession is that lawyers are too expensive. Billing on the basis of time and volume is not well received by the general public. In a value added world, charging by way of measures that are not directly related to value is not popular. The “tyranny” of billable hours and the ubiquitous time based billing is a recently new phenomenon in the history of legal practice, and has created some difficulties for the maintenance of an ethic of service.359

New technologies have created instant, cost effective access to legal resources, making “time spent” a much less relevant factor in determining appropriate legal fees.360 Clients are increasingly demanding value for money and transparency in billing practices. Lawyers need to become adept at costing services according to the value placed on them by clients rather than time and volume. Managing partners of several of Sydney’s largest law firms have indicated that about 30% of the firm’s work is now charged on a non hourly basis.361 Similarly, more than 80% of the top 25 law

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358 Interview Subject, August 2000
359 Spiegelman CJ, 26 October 2000, op.cit
360 Chan, S “E-commerce is redrafting rules of the game for law firms”, LawTalk, Volume 547, 4 September 2000, p10
firms in the United Kingdom have indicated that they may remove hourly billing in favour of fixed and success fees.\footnote{362}

The most telling argument against hourly billing is that it is an in-built limitation to generating fees. The fact is that, no matter how hard working a person is, there are only so many hours in the day.\footnote{363} This reality makes alternative billing options more attractive. The characteristics of a good billing system are:

- The client receives value for money;
- The lawyer is remunerated according to performance; and
- The lawyer has an incentive to be efficient, apply an appropriate level of resources, add value and ensure the client received the desired outcome.\footnote{364}

Successful practices provide a service at a fee that is reasonable to the client and exceeds the cost of performing the service. Fundamentally, a fee should be an attempt to charge what the service is worth. An hourly rate is a technique that assists this process, but cannot replace other methods of assessing value.\footnote{365} There are many strategic billing alternatives to hourly rates available to law firms, including:

- Task based billing, in which various tasks are separately delineated and a cost determined for each task;
- “Win only” fee structures;
- Fixed fee billing, where the entire file is treated as a “task”;
- Hybrid billing options, including setting a cap on total fees.\footnote{366}

Annual retainers have been popular in the United States for small, repetitive tasks and are gaining strength. Retainers are normally payable at the beginning of the agreed period and are in the form of a discounted hourly fee.\footnote{367}

Australian firms are already taking up the challenge of alternative billing. According to the Chairman of the International Bar Association’s Business Law Division, Australian firms openly discuss fees with clients, don’t charge rigid hourly rates and happily share information with clients in ways which European law firms would not.\footnote{368}

It should be noted that billing practices not only affect clients, they affect the workplace. It is clear that many lawyers feel immense pressure to meet billable hours targets, and (as noted in Chapter 6) this is often a primary reason for their departure from the profession. This also suggests that “commercialism” (in the sense of pressure to make a profit for the business) already exists in law firms, and that the introduction of multidisciplinary practices will not introduce this phenomenon to legal practice for the first time.

\footnote{362} Mizzi, Anne, “The hour of reckoning”, Law Society of England and Wales Gazette, Volume 97 No 38, 5 October 2000, p84
\footnote{363} “Dollar diplomacy: beyond hourly billing”, Lawyers Weekly, 15 December 2000, p15
\footnote{364} Ryan, Michael, “Charge of the enlightened brigade”, Australian Financial Review, 12 July 2000
\footnote{365} Canadian Bar Association, op.cit, p54
\footnote{366} Ibid, pp56-59
\footnote{367} “Dollar diplomacy: beyond hourly billing”, op.cit, p16
\footnote{368} Bourlioufas, Nick, “Australian and Canadian lawyers have edge in cyberspace”, The Legal Insider, 23 November 2000, www.lexislegal.com
Case Study: Legal-Bid.com

Legal-Bid.com is a free US website designed to allow people to shop more easily for legal services. Attorneys interested in securing clients through Legal-Bid register their areas of expertise and the states in which they are entitled to practise law. Individuals or businesses that need legal assistance log onto the site, list the country and state where they are located and provide a general description of the legal services required. Individual lawyers then obtain more details from the prospective client and submit bids. The client then decides which bid to select. All terms and conditions are negotiated directly between the client and practitioners.

C Professionalism and Ethics

The practice of law requires moral courage.

A central factor in the legal profession’s unique distinctiveness lies in its commitment to ethical principles. The French summarise the core values of the profession under four headings: devotion, dignity, generosity and independence. A report by the American Bar Association (ABA) in 1996 on professionalism defined a professional lawyer as “an expert in law, pursuing a learned art in service to clients and in a spirit of public service, and engaging in these pursuits as part of a common calling to promote justice and public good”. In 1997, the President of the ABA, Jerome Shestack, described the key elements of legal professionalism as:

- Fidelity to ethics;
- Service with competence and dedication - but with independence, (and thus the ability to say no to a client);
- Meaningful legal education;
- Civility and respect for authority;
- Commitment to improve the justice system and advance the rule of law; and
- Pro bono service.

The issue of commercialism and professionalism was debated at an International Bar Association Conference, where it was noted that “commercialism” can mean two things: either adopting a commercial spirit or methodology in a given activity, or an inappropriate emphasis on profit. However, it was also noted that it is important that the lawyers practise their profession in a business like manner, as by operating efficiently and effectively the legal profession maintains standards and provides the best possible service to its clients. Lack of attention to commercial aspects of legal practice can lead to financial weakness and a greater temptation to behave unethically.

It is apparent that the emphasis appears to be in society that the practice of law should be viewed as any other business enterprise and conducted as such. If this

369 Description drawn from American Bar Association Elawyering Website, http://www.abanet.org/elawyering/casestudies/examples_marketplaces.htm
370 Australian Corporate Lawyers Association, op.cit, p3
372 Ibid, p79
374 see Levy, op.cit, pp76-81
view is fostered then the concept of the law as a profession tends to become less relevant. It would not be difficult to extrapolate that a trend such as this could lead to a decline in compliance with the ethical obligations imposed in a profession. It is not difficult for the practice of law to be conducted along business lines. However, the sacrifice of the view that the practice of law is foremost a profession, and losing sight of this overriding objective, could have the tendency to affect the ethical standards of the profession in the future.

According to the Chief Justice of New South Wales, this debate can be characterised as between two alternative ways of approaching professional organisation. The first sees professionalism as the means by which an occupation exercises control over the market for its services. The second identifies the profession with particular standard of conduct irrespective of any associated economic advantage. It is important that the profession continues to adhere to the second of these two approaches. Self regulation is no longer a reality for legal practitioners in most Australian jurisdictions in any case, as either co-regulation or (in the case of South Australia and Western Australia) external regulation of the profession is the norm.

It is important that experienced, senior legal practitioners provide guidance and leadership to younger practitioners on issues of ethics. Appointing one partner to oversee ethical issues within a firm is one way of building a means by which ethical responsibilities can be reinforced within the firm’s management structure. Such a step also makes a public statement about the centrality of ethical behaviour to the firm itself. But the key to an ethical firm is having in it a deep seated culture of ethical practice throughout the firm. This is the continuing responsibility of all principals.

The structure and culture of the Bar enables ethical standards to be maintained in a similar, but more holistic, manner. Members of the Bar begin their professional lives by ‘reading’ with, or being ‘pupil’ of, a more senior barrister. They also undergo introductory vocational courses of instruction, which include significant ethical elements. Thereafter they have constant contact with other members, particularly in the course of advocacy work, and further develop their understanding of ethical standards by interacting with other members. Accordingly, senior barristers can provide a strong and beneficial influence on the maintenance of ethical standards. Similarly, Bar Associations need to provide leadership on ethical issues. The NSW Bar Association, for example, already has a scheme whereby junior counsel can seek advice and assistance on ethical issues from senior counsel. The Victorian Bar encourages practitioners to approach members of its Ethics Committees, or other individual practitioners through an ‘open door policy’.

There is an inherent tension between money and ethics that the profession is probably yet to address adequately. Some clients do not see ethics in a lawyer as being important. They simply want to win. While a lawyer must act in the best interests of his or her client, this is always subject to an overriding duty to the court. A competent lawyer will be able to discern the difference between a client’s interests and a client’s wants. Lawyers are the advisers of their clients, not merely their

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375 Spiegelman CJ, 26 October 2000, *op.cit*
376 Rees, *op.cit*
agents. At its heart, ethics is about finding the best possible answer to the question “What ought one to do?”. Ethics can therefore be thought to come before the law.377

The new economy is also creating new ethical problems. The rise of dotcoms has meant that start-up clients want legal advice, but do not necessarily have the money to pay for it. One of the more innovative billing options currently being used by some law firms is accepting equity in the client in return for legal advice. Such transactions are not uncommon in the United States, and are also under consideration by the French Bar.378 In Australia, Blake Dawson Waldron has established a joint venture with merchant bank Rothschild and management consultants Booz Allen Hamilton to offer services to start up companies in exchange for equity.379

The ABA has examined the ethics of this practice and concluded that such practices can be accommodated within ethical rules, provided that the principle of independence is maintained. According to the ABA, a lawyer’s representation of a company in which he or she holds shares does not create any inherent conflict of interest. However, according to the ABA, a lawyer should not represent a company where his or her holding in that company is significant enough to adversely affect the independence of his or her advice. Clients must also be informed of the possible effect, be given the opportunity to seek independent advice and consent in writing to the transaction and its terms.380 The Law Society of New South Wales has been addressing this problem for some time and will shortly determine the relevant conduct rules governing it.

377 Australian Corporate Lawyers Association, op.cit, p3
378 Levy, op.cit, p79
380 Lightstone, Susan, “A piece of the action”, National, Volume 9 No 6, October 2000, p85
5.4 SUMMARY OF CHALLENGES

A CHALLENGES FOR INDIVIDUAL PRACTITIONERS AND FIRMS

Barristers
- The extent to which practitioners can balance general and specialist skills, or how they may develop specialised areas of practice while retaining sufficient connections with the wider Bar and other practitioners.
- The need to adapt to changes to legal business structures, while preserving the collegiate foundation that sustains the independent Bar’s professional ethical values.
- The possible modification or abolition of advocate’s immunity.
- Finding methods to assist barristers with parenting responsibilities.

Small Firms
- Use of technology to assist productivity and provide 'commoditised' legal services.
- Examination of niche markets and specialisation.
- Attracting new clients through alliances and new business structures.

Mid Size Firms
- Consideration of options such as mergers or nationalisation.
- Development of networks and alliances.
- Consideration of niche marketing and specialisation.

Large Firms
- Consideration of nationalisation (where this has not yet occurred) and incorporation.
- Possible mergers/collaborations with either large foreign law firms or a 'big five' accounting firm.
- Consideration of providing a wider range of business related services.
- Expansion into overseas markets.

Corporate Counsel
- Acquiring greater understanding of business issues.
- Managing relationships with private law firms.

B CHALLENGES FOR PROFESSIONAL BODIES

Policies
- Developing policies to ensure that the fundamental values of the profession are not affected by new business structures.
- Further development of MDP Policy to ensure no diminishing of ethical or professional standards.
- Further development of ethical standards.

Management
- Study the implications of outsourcing of core functions by law firms.
Assistance to Practitioners

- Strategies to assist part time practice at Bar.
- Strategies/services to assist small practices.
- Continue lobbying/liaison with overseas professional associations to improve access to foreign legal markets.

Representing the Profession

- Strategies to ensure that those working outside traditional professional structures are adequately represented by constituent bodies, and remain part of the legal profession.
CHAPTER SIX:

THE 21ST CENTURY WORKPLACE

We each must decide, as early in our practice as possible, how much of me is “for sale”. Once we decide to protect a certain portion of our quality time and energy to raise our children, volunteer in our communities and follow other personal pursuits, we should realise that the struggle is not over, but just beginning. [381]

Having examined the world from the firm’s perspective, the future should also be examined from the perspective of the individual practitioner.

A number of recent studies portray today’s legal workplace as characterised by long hours and dissatisfied workers. Many practitioners express regret in their career choice. A significant percentage are intending to leave their current position.

Much of this Chapter looks at the profession from the perspective of the solicitor in a private law firm. It appears that practitioners working the corporate and government spheres do not generally experience clashes between work and family responsibilities to the same degree as those in the private sector. Lawyers generally, and women in particular, are leaving law firms to work as corporate counsel and government lawyers. [382]

Just as the principal business structure of legal practice, the partnership, is ill suited for the 21st century, so many of the work practices of private practice are out of step with changes being made in other sectors of the workforce.

Section 6.1 examines available material on three significant issues facing the profession: hours of work, the position of women in the profession and work dissatisfaction. Section 6.2 draws on the trends identified in Chapter 3 and develops possible scenarios for the future. Section 6.3 then looks more closely at challenges for the profession, the most significant being improving job satisfaction and retaining staff. A range of flexible work practices and management improvements are examined. The Chapter concludes by discussing issues for older practitioners and how small firms should address workplace issues.


[382] The 1998 DEETYA Australian Law Graduates Career Destinations survey found that the best predictor for the career destination for 1995 graduates studies was family responsibilities in the form of children. Graduates with children were more likely to have been working in the public sector, CLSOs, doing teaching or some ‘other’ work and were less likely to have been working in the private legal profession or private sector than graduates without children. A recent survey also shows that over 50% of corporate counsel have graduated since 1990.
6.1 TODAY’S WORKING ENVIRONMENT

A Hours of Work

It is unreasonable to suggest that practitioners work for between 9 and 14 hours per day, being told that it is all part of ‘paying your dues’. It is not family life to say ‘goodnight’ to a 4 year old on the phone at night because, like most nights, you have to work late. Even partners are forced to do this. If that is what being a partner is about why would you want to do it? Life is too short to want to spend it in the legal profession.\(^{383}\)

It is trite to say that the legal profession is characterised by long hours of work. One interviewee described this as the profession’s “Faustian bargain” – earning more but having to work much longer hours to do so.

Concern at the trend towards increased pressure and longer hours is emerging both in Australia and internationally.\(^{384}\) Concern relates to both the wellbeing of individual staff and the ability of organisations to retain trained staff in the long term.

**Law Institute of Victoria**

The 1999 Law Institute of Victoria Annual Survey showed over 60% of practitioners were working more than 50 hours per week and that about 24% of solicitors were working over 60 hours a week. Female solicitors were more likely to work part time than their male counterparts, and marginally less likely to work over 60 hours.

**Table 20. Weekly Hours of Work (%) Victorian Solicitors 1999\(^{385}\)**

<table>
<thead>
<tr>
<th>Under 35 hours</th>
<th>Male</th>
<th>Female</th>
<th>Total</th>
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<tbody>
<tr>
<td>35-39</td>
<td>1.7</td>
<td>3.3</td>
<td>2.4</td>
</tr>
<tr>
<td>40-44</td>
<td>11.3</td>
<td>13.9</td>
<td>12.3</td>
</tr>
<tr>
<td>45-49</td>
<td>10.4</td>
<td>13.3</td>
<td>11.6</td>
</tr>
<tr>
<td>50-54</td>
<td>31.9</td>
<td>24.9</td>
<td>29.1</td>
</tr>
<tr>
<td>55-59</td>
<td>8.7</td>
<td>7.1</td>
<td>8.1</td>
</tr>
<tr>
<td>60 or more</td>
<td>26.4</td>
<td>20.2</td>
<td>23.9</td>
</tr>
<tr>
<td><strong>100%</strong></td>
<td><strong>100%</strong></td>
<td><strong>100%</strong></td>
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</tbody>
</table>

**Law Society of New South Wales**

Long hours are also characteristic for New South Wales solicitors. Similar hours of work statistics were obtained in the New South Wales Law Society Family Responsibilities Study. This study found that solicitors worked longer hours than the average employee (as defined by the Australian Bureau of Statistics) and that over 60% of employees, associates and salaried partners worked over 50 hours a week, and over 80% of equity partners usually worked 80 hours a week.\(^{386}\)

\(^{383}\) Law Society of Western Australia & Women Lawyers of Western Australia, March 1999, op.cit, p23  
\(^{384}\) Law Society of NSW, *Quality of Life in the Legal Profession*, 1999, p8  
\(^{385}\) *Law Institute Journal*, March 1999, pp53-4  
\(^{386}\) quoted in Bourke, Juliet, *Corporate Women, Children, Careers and Workplace Culture*, Industrial Relations Research Centre, University of New South Wales, 2000, p65
The *Family Responsibilities Study* showed that there was a sense that long hours were “expected” rather than a matter of choice. Practitioners surveyed cited lack of support staff or other resources and the expectations of partners as reasons for long hours. They also believed that the “ethos” of the legal profession had created an expectation that long working hours were the norm, and that this was being driven by client expectations.  

**Law Society of Western Australia**

In 1999 the Law Society of Western Australia and the Women Lawyers’ of Western Australia conducted a study of practitioners who had left the profession. On the issue of hours of work, the Western Australian survey reported:

> Hours could be very long, with some reporting 12 hours a day or more – frequently working to midnight and back in the office by 7am – in order to achieve their quota of billable hours, as many as 7.5 per day…. The extra time required by new lawyers to do a task would often need to be discounted to bring it in line with standard charges and this created the need for additional hours. Combined with the pressure to stay late to ‘impress the partners’, work could easily become all consuming.

A quantitative study of young lawyers conducted on behalf of the Law Society of Western Australia in 2000 showed that 6% of respondents worked 8-10 hours per day (excluding lunch), while 21% work between 10 and 12 hours a day.

**The Victorian Bar**

The issue of hours of work is also a problem at the Bar. A 1998 Study commissioned by the Victorian Bar noted that the “entrenched work ethos” at the Bar required working weekends and long hours on a continuous basis, making it difficult for those with parenting responsibilities to compete for work and difficult for all barristers to participate in family life. The report also noted that the problem of long hours affects not only female barristers with a young family, but also male barristers.

**Conclusion**

At a personal level and at a corporate level, “cultural” change is hard and the bigger the change required, the harder it is, the longer it takes and the more likely it is that radical change will only be precipitated in times of crisis. Make no mistake, to deal effectively with the causality that lies beneath late-night machismo will require radical change. It is possible to make substantial changes to corporate culture incrementally and over time, but it will still be hard.

If working long hours tend to be associated with commitment to the firm, failure to “put in” those hours is seen as a lack of commitment. Men and women who are seeking to balance work and personal life are in an invidious position if they wish to pursue a successful career in the law.

The hours required by legal practice inhibit living a well-rounded life and are detrimental to general health and well being. As Michael Gawler, (then) President of

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388 Law Society of Western Australia & Women Lawyers of Western Australia, *op.cit*
389 Ibid, p20
390 Law Society of Western Australia, *Young Lawyers Salary Survey 2000*, September 2000, p4
392 Herron, Mark “Impediments to culture reform”, *Law Institute Journal*, Vol 74 No 3, April 2000, p20
the Law Institute of Victoria noted in a recent column, “It is difficult for young lawyers to stay in good health and lead satisfying lives if they are working more than 60 hours per week.”

B Equal Opportunity?

The real loss in the lack of female advancement in the legal profession is not just the frustration of particular women’s careers. It is not simply the economic loss that is inherent in failing to promote to the full the highly refined economic talent of a trained lawyer. The biggest loss, it seems to me, lies in the failure to bring the skills of women to bear on the administration of the law.

Over 50% of law school graduates are women. Representation of women in the profession has now been significant for over a decade. Many studies have now been conducted about gender bias in the legal profession. A study by the Victorian Women Lawyers in May 1999, Taking up the Challenge, noted the following key studies:

- Keys Young Research, Research on Gender Bias and Women Working in the Legal System, March 1995 (the Keys Young Study);
- Victoria Law Foundation, Facing the Future: Gender, Employment and Best Practice for Law Firms, 1996 (the VLF Study);
- Law Institute of Victoria, Career Patterns of Law Graduates, c1993;
- Supreme Court of Western Australia, Report of the Chief Justice’s Taskforce on Gender, June 1994;

Without detailing individual findings, these studies reveal similar results:

- Women are over represented in the lower echelons of the profession and under represented in the upper echelons.
- Women leave the profession in disproportionate numbers. They do so for various reasons, but these cannot be attributed solely or predominantly to family responsibilities.
- The assumption that, given time, the number of women entering at the bottom of the profession would be reflected in senior ranks has not materialised.

Women in the legal hierarchy

Despite the increase in numbers of women, the profession remains marked by largely gender based hierarchical separation. While 55% of graduates recruited by the big five firms are women, an average of 20% go through to partner level. The attrition rate among women is also high: while an average 54% of new senior associates are women they account for only 22% of new partners.

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393 Gawler, Michael, “President’s Column” Law Institute Journal, December 1999, p3
Wales, women represent 10% of barristers (and only 1% of senior counsel); 15% of the judiciary; and 7% of partners in private practice.  

This hierarchy appears to also apply in academia, as the table below illustrates.

**Table 21. Gender of Legal Academic Staff 1997-98**

<table>
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<th></th>
<th></th>
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</thead>
<tbody>
<tr>
<td></td>
<td>Total</td>
<td>Female</td>
<td>% Female</td>
<td>Total</td>
</tr>
<tr>
<td>Professor</td>
<td>110</td>
<td>19</td>
<td>17.3%</td>
<td>114.75</td>
</tr>
<tr>
<td>Associate Professor/Reader</td>
<td>114.25</td>
<td>33.5</td>
<td>29.3%</td>
<td>119.25</td>
</tr>
<tr>
<td>Senior Lecturer</td>
<td>271.5</td>
<td>84.5</td>
<td>31.1%</td>
<td>285</td>
</tr>
<tr>
<td>Lecturer</td>
<td>315.6</td>
<td>173.6</td>
<td>55%</td>
<td>302.3</td>
</tr>
<tr>
<td>Senior Tutor/Tutor</td>
<td>120.5</td>
<td>73.5</td>
<td>61%</td>
<td>77.5</td>
</tr>
<tr>
<td>Total</td>
<td>931.85</td>
<td>384.1</td>
<td>41.2%</td>
<td>898.8</td>
</tr>
</tbody>
</table>

The proportion of women in the judiciary is also relatively low. Women represent 15% of High Court judges, 9% of Federal Court judges and 40% of Family Court judges. The average for State Supreme Courts is 6% and District Courts 25%.

**Income**

Coinciding with their smaller representation at the upper echelons of the profession, female solicitors have generally earned less than their male colleagues. Comprehensive national figures are not available; however, the Law Society of New South Wales 1998/9 Practising Certificate Survey found that:

- 48% of female solicitors (compared to 30% of male solicitors) reported incomes of $50,000 or less;
- 11% of female solicitors (compared to 27% of male solicitors) reported incomes of $100,000 or more.

Studies in other jurisdictions confirm this disparity. In Western Australia, male practitioners earn an average of $5000 more than their female colleagues at most career stages. The average salary of males is higher than that for females for articles clerks, restricted practitioners and for practitioners in their first to forth years of practice. The preliminary results of a Tasmanian survey also indicate that women lawyers are likely to be receiving lower rates of salary than their male counterparts with the same level of experience.

**Reasons**

The reasons for women’s lack of progression seem to relate primarily to family responsibilities. The Tasmanian report found that career interruptions, usually caused by family responsibilities, were a major barrier to career advancement. It also

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396 Bourke, 2000, op.cit, p46
398 Kirby, 20 August 2001 op.cit
399 Law Society of Western Australia, September 2000, op.cit, pp8-9
400 Report by Tasmanian representative on Law Council Equalising Opportunities in the Law Committee, 3 November 2000
found that women were more likely to become principals by establishing their own practice.\textsuperscript{401} The Law Institute of Victoria noted that women had a dramatically higher rate of exit from legal practice during the first five years than men, a fact that also affected the number of women reaching partnership level.\textsuperscript{402}

Motherhood has been seen as an impediment to women reaching partnership level in larger firms, particularly if they wish to pursue a career part time. This has been described as the “culture of visibility”: 12-15 hour days are expected and unless a practitioner is seen in the office early in the morning, late at night and on weekends their commitment to the firm is questioned.\textsuperscript{403} This is illustrated by the recently published comment from a senior female silk that the profession will reward women who are willing to make the necessary sacrifices of time and social life.\textsuperscript{404}

In some jurisdictions, formal steps have been taken to address gender equity issues. The efforts of the Victorian Bar have been noted in Section 5.2A. Similarly, the New South Wales Law Society and Bar Associations have implemented a range or programs, and the New South Wales Government has mandated equal opportunity courses as part of practitioners' continuing legal education obligations.

Unfortunately, these and other initiatives do not yet seem to have generated a fundamental change in the basic ‘norms’ of how the profession works. This has led the Law Society of New South Wales to launch an inquiry into why so few women become partners, making the issue a priority project for 2002.

While many law firms are promoting more flexible work practices, the reality is that flexible work practices are still usually seen as aberrant rather than a normal and acceptable means of legal practice. A recent survey of 1400 law graduates from Harvard and Columbia\textsuperscript{405} showed that not only was the experience of legal culture different for female graduates, but so were their perceptions of that culture. While both women and men study law form the same reasons, their reasons for choosing a particular firm differ. Women rate balancing work and life first, followed by intellectual challenge and then firm reputation. Men rank these three criteria in the reverse order. In the same survey, women nominated exclusion from networks and mentoring opportunities as highly significant barriers to progression, factors that men did not identify as significant. According to one commentator “we’ve engaged the minds of decision makers, but not their hearts.”\textsuperscript{406}

This suggestion is supported by a recent Australian study. The Melbourne office of Deacons recently established a special forum for women to raise issues facing them in practice. The women involved claimed that the strongest opposition to change in culture came from young male lawyers, who were more resistant to flexible work practices and part time partnerships than their more senior colleagues.\textsuperscript{407}

\textsuperscript{402} Law Institute of Victoria, \textit{Career Patterns of Law Graduates}, c1993, p2
\textsuperscript{403} The Age, 16 December 2000, p3
\textsuperscript{404} Ibid
\textsuperscript{406} Ibid, p7
\textsuperscript{407} Kirby, 20 August 2001, \textit{op.cit}
Note: Other equity concerns

It was suggested to the Taskforce that it is not only women, but also others who “manifest difference” who have difficulty making a career in the law. Such groups include those from lower socioeconomic backgrounds, non English speaking backgrounds and indigenous backgrounds. As noted in Chapter 2, statistics examining broad demographic characteristics are not available. The Taskforce was not able to locate any relevant studies concerning the promotion rates of these groups, and much of the academic research has focussed on women. It would appear that further work needs to be done in these areas.

Case Study: Diversity in Law Program

The Diversity in Law Program is a joint initiative between the Law Society of England and Wales, charity Global Graduates, the UK Department of Education and the London Development Agency. The program aims to improve the chances of a successful legal career for people from a range of backgrounds.

Diversity in Law will concentrate on ethnic minorities but also cover other groups, such as mature age students. It will involve a range of activities, including promoting contact between students and firms, providing guidance for students, research into ethnic minority school leavers and specialised training.

The program is supported by a mix of large and small firms. Its initial focus will be on increasing the diversity of recruits of ‘City’ (that is, large, London based) law firms.

C Satisfaction and Retention Rates

The nature of legal practice has been transformed by the opening of traditional areas of practice to non-lawyers, deregulation, competition, specialisation and technological advances. All of these have affected the working conditions of solicitors: largely detrimentally, leading to decreased profit margins, increased pressure and longer hours.

A significant proportion of both male and female solicitors are dissatisfied with the law firm environment. One study estimated that up to 30% of private practitioners are considering leaving their current position. Another study shows that 44% of Sydney and Melbourne lawyers are considering leaving their present firm. A senior legal recruiter has also stated that he believes that the majority of Queensland lawyers are unhappy at work and biding their time for the next “plum job”.

It should be noted that trends seen in Sydney and Melbourne may not be representative of the whole of Australia. A survey conducted by the Law Society of South Australia in 2000 showed that almost 80% of respondent practitioners were either satisfied or extremely satisfied with being a lawyer. 72% of respondents were also either satisfied or extremely satisfied with their current job.

References:

409 Victorian Women Lawyers Association, Taking up the Challenge, May 1999, p19
411 “Queensland Lawyers Looking to Leave”, Lawyers' Weekly, 15 December 2000, p1
412 Law Society of South Australia, 2000 Survey of Members, October 2000, pp2-3
The Leavers:  
Stress, derived from a wide array of workplace factors was identified by most of the interviewees – and had been manifested in both mental and physical forms. A number of respondents mentioned being unhappy and miserable, crying, being cranky and irritable, or depressed. Some had been on anti-depressants. They mentioned losing their confidence and sense of self worth during employment in a law firm. Physical symptoms were also mentioned – exhaustion, decline in general physical health, ulcers, weight loss, stomach tension and broken sleep.  

Young lawyers of both sexes are leaving the profession in ever-increasing numbers. Respondents to the Western Australian survey generally held the following views about private practice:

- They had inadequate control over factors which impacted on their work;
- There was unfair allocation of “interesting work”;
- Expectations were not made clear;
- There was no clear vision and direction from firm partners;
- Salary was inadequate compared to level of responsibility.

The Young Lawyers’ Section of the Law Institute of Victoria has recently reported of hearing “horror stories” from young lawyers over a number of years about the employment conditions in some Victorian law firms. An earlier study by the Law Institute of Victoria asked graduates who had left practice to indicate whether a number of factors were important to their decision to leave practice. Key results are set out in Table 22 below.

<table>
<thead>
<tr>
<th>Reason</th>
<th>Female</th>
<th>Male</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal/lifestyle</td>
<td>76</td>
<td>63</td>
</tr>
<tr>
<td>Family Commitments</td>
<td>65</td>
<td>32</td>
</tr>
<tr>
<td>Lack of satisfaction</td>
<td>59</td>
<td>63</td>
</tr>
<tr>
<td>Level of remuneration</td>
<td>29</td>
<td>52</td>
</tr>
<tr>
<td>Partner’s career commitment</td>
<td>26</td>
<td>7</td>
</tr>
</tbody>
</table>

The Stayers:

Even among those remaining in the profession, the dissatisfaction rate is steadily rising. An article in the May 1999 Vanderbilt Law Review titled “On being a Happy, Healthy and Ethical Member of an Unhappy, Unhealthy and Unethical Profession” concludes that the available survey data and anecdotal evidence in the United States “strongly suggests that lawyers are in remarkably poor health and quite unhappy”.

Evidence suggests that work related stress is also a significant issue for the legal profession in Australia. In the 1998/9 Law Society of New South Wales practising certificate survey, 75% of respondents reported experiencing at least one of eight identified forms of stress.

413 Law Society of Western Australia & Women Lawyers of Western Australia, op.cit., p22
414 Ibid, p12
415 Law Institute of Victoria, Young Lawyers’ Section, Thriving and Surviving, April 2001, p1
416 Law Institute of Victoria, c1993, op.cit
417 Law Society of NSW, Quality of Life in the Legal Profession, 1999, p8
Even in South Australia, where practitioners are relatively happy with legal practice, 56% of practitioners surveyed reported an increase in stress over the last two years. South Australian practitioners who are salaried partners or with 10-19 years in practice also showed noticeably different results from other South Australian practitioners, with significantly lower levels of job satisfaction (44% compared to 71%) and a high incidence of increased stress (81%).

A study was conducted by the Victoria Law Foundation (VLF) in 1996. The study surveyed all solicitors holding practising certificates in Victoria and female solicitors holding practising certificates in New South Wales. Key findings on job satisfaction were:

- Overall job satisfaction depended more on position in the firm than gender;
- Principals and consultants were the most satisfied group by a significant margin;
- There was no significant difference between overall job satisfaction of male and female employed solicitors;
- The most satisfied group was female principals and consultants, and the least satisfied group was female employees.

The VLF Study identified a number of “drivers” of overall job satisfaction. Interestingly, the drivers of satisfaction are almost exclusively about emotional and intellectual needs rather than about material needs and aspirations. In approximate order of importance, the factors that influence overall satisfaction of employees are:

- The type of work done;
- The intellectual challenge of the type of work done;
- The rate of promotion and career advancement;
- The personal support given by the firm;
- Power at work; and
- Balance between personal and professional lives.

The “Big Picture”: is Law a Rewarding Profession?

A sense emerged from this study that the practice of law has become increasingly estranged from the interests of the community it is intended to serve. While this is an important social and political issue, there are also important considerations for the management of legal firms if young lawyers are becoming disillusioned about their capacity to contribute on a broader scale to the community of which they are a part.

Given the levels of dissatisfaction with law as a career choice, the question needs to be asked whether there is something more intrinsic about being a lawyer, (as opposed to remediable problems with work practices) which is dissatisfying? An American Bar Association article cites four reasons for the increasing dissatisfaction with law as a career choice:

- The transformation of law from a highly principled calling to “an increasingly unprincipled business”;

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418 Law Society of South Australia (2000), op.cit, p6
419 Ibid, p10
420 Victoria Law Foundation, Facing the Future: Gender, Employment and Best Practice Issues for Law Firms, 1996 (the VLF Study)
421 Ibid, Volume 1, p vii
422 Ibid, Volume 1, p9
423 Law Society of Western Australia and Women Lawyers of Western Australia, op.cit, p40
- Lack of civility and collegiality amongst members of the profession;
- Transformation of lawyers from counsellor/conflict avoider to a mere advocate in an adversarial process; and
- General societal changes: the increased complexity, pace and depersonalisation of modern life.

The profession’s emphasis on billable hours and time charging raises ethical issues for practitioners. Respondents to the Law Society of New South Wales, *Family Responsibilities Study*, queried whether current practices were “an honest way to practise law”. The Victorian Governor has also warned of a “profound disenchantment” among young practitioners and stated that he believed that the profession was heading for a crisis.

As noted in Chapter 3, today’s young solicitors are often attracted to pro bono work. Firms are therefore increasing their level of pro bono work as a means of attracting and retaining young idealistic practitioners. It may be that the wheel is slowly turning, at least on some engines.

**The Costs of Dissatisfaction**

For employers, the message is very clear. If your employees are satisfied they will stay and actively contribute to the growth of your firm. If your employees are dissatisfied there is a good chance they will leave private practice or leave the legal profession. Both of these outcomes are costly and wasteful.

Losing young solicitors is not just a problem for those who “fail”. A significant pool of evidence is starting to develop which deals with the cost to law firms of poor retention rates. A VLF Study found that the following costs occur when a solicitor leaves:

- The cost of replacing an established solicitor is greater than the solicitor’s annual salary;
- Revenue foregone represents over half the turnover cost in medium and large firms, and slightly less than half in small firms;
- Positions are typically vacant for between five and twelve weeks. During this time about half of the solicitor’s normal budget is recovered by reallocation of files;
- The estimates are seen as conservative, and do not include the unseen cost of lower morale, which can lead to further staff turnover and loss of clients.

Other studies support the suggestion that low retention rates have a significant affect on profitability:

- A 1998 Massey University (NZ) study found that when a senior employee leaves a law or accounting firm up to 40% of their clients followed them.
- Westpac estimates that losing one staff member with 5-7 years experience costs the company the equivalent of one year’s pay.

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424 Horn, op.cit
425 Law Society of New South Wales, October 1998, op.cit, p82
427 Victoria Law Foundation Volume 1, op.cit, p24
429 “Law firms recognising family needs”, *Law Talk* Vol 529, 18 October 1999, p9
430 Adamson, “Pregnant Pause”, *The Sydney Morning Herald*, 1 April 2000, pp1-2
It is estimated that the loss of a fourth year solicitor cost city firms an average of $145,000. The equivalent costs to a medium size firm is approximately $71,600, and to a small firm about $61,400.\footnote{Beaton-Wells, “Implications of the Invisible Costs of Solicitor turnovers”, \textit{Law Institute Journal}, May 1998, p37}

AMP’s work and family initiative, which includes six weeks paid maternity leave, made a net savings for the company of $3.2 million over 4 years by improving retention rates for female employees.\footnote{Victorian Women Lawyers, \textit{op.cit}, pii}

\textit{Conclusion}

Satisfaction has two aspects. Satisfaction of the individual lawyer with their chosen career and all it offers and satisfaction from the firm’s point of view in relation to an adequate return on their investment and the long term development of their business. It would appear from the research to date that neither party is satisfied.

Labour costs represent the single largest cost for law firms. It is therefore critically important that this significant investment in labour is not wasted. A sound corporate environment is conducive to employee satisfaction, and therefore retention.

Young lawyers who are members of Young Lawyer Committees of law societies and bar associations frequently complain that long hours, use of time costing as the predominant measure of productivity and other work practices are forcing them to change jobs more frequently, leave private practice or even work overseas. Inappropriate work practices actually add considerably to the costs of running a legal practice and do not serve the community well.
6.2 POSSIBLE FUTURES

A WHO will be the solicitors of the future?

The last place you would expect to find a Generation X and Y friendly organisation is a law firm. Over time, men’s participation in the labour force has decreased, while women’s participation has increased. For example, in 1966, 84% of men and 36% of women participated in the labour force, whereas by 1996 those figures had converged to 73% and 53% respectively. This convergence should continue, as during the last ten years, the size of the female labour force has grown by twice the rate of the male labour force (30% compared to 14%). Each successive generation of women over the past 60 years has had a higher attachment to the paid workforce than previous generations.

Women have represented the majority of students in law schools for almost a decade. In the future, retaining the services of high quality staff will mean retaining more women. And this not only means retaining female solicitors as employees. Because women are marrying later and having fewer children, law firms will be dealing more and more with associates and partners who wish to have time off to have children. As this happens, issues such as part time employment, maternity leave and flexible working hours will increasingly need to be addressed.

Women are sometimes described as the “canaries” of a workplace. According to one study, “women are the harbingers of undercurrents in the profession that transcend gender. Legal employers should listen closely to what women have to say, because women are voicing the concerns of a growing number of men”. It appears that the new generation of law graduates is unwilling to compromise their personal lives to the same extent as earlier generations. According to the managing partner of Minter Ellison, Nigel McBride, “it’s not all about money, it’s about recognition, it’s about advancement and it’s about lifestyle”.

Even those without family responsibilities are pushing for a life outside the firm. Generation X has very different expectations about the workplace than their Baby Boomer parents. The catchphrase of Generation X is said to be “Never confuse having a career with having a life”. They are brought up believing that they will have no job security, and loyalty is therefore not a concept within their lexicon. They want an interesting life as well as a successful one, and many are not prepared to put up with drudgery and unhappiness to achieve the goal of partnership.

One senior practitioner interviewed stated that young practitioners were “more baffling”. Partners who have worked within and accepted the “command structure” of legal practice are faced with junior solicitors who don’t. The big issues are

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433 Nash, Kate, “Legal eagle blows in”, Adelaide Advertiser, 18 November 2000, p70
434 Bourke, 2000, op.cit, p35
436 Nash, op.cit, p70
437 Bourke, 2000, op.cit, p38
leadership, gender and cultural diversity: issues that the profession has not had to face head on in the past.

**Case Study: Downshifting**

Twenty eight year old insurance lawyer Helen Tilley combines work as an insurance lawyer for Blake Dawson Waldron in Canberra with her keen interest in skiing.

In 1999, Helen spent five days a week on ski patrol at Thredbo and two in the Canberra office. After returning to legal practice full time in September, she was offered work on the Lake Tahoe ski patrol in Nevada. Blake Dawson Waldron granted her 6 months unpaid leave. While in the US, Helen enhanced her skills by working with risk management division of the ski resort. Helen returned to work part time.

**B WHAT will be done?**

The growth of the Internet as a communications tool has made enormous quantities of information available to anyone with a computer and a phone line to connect it to. The vast bulk of this information is available free of charge. This includes a significant amount of information about the law and legal issues. Similarly, search engines and other ‘information sifting tools’ are becoming increasingly sophisticated. Put simply, practitioners will no longer be able to bill for information which clients can obtain over the Internet free of charge.

Much of the daily ‘bread and butter’ work of the legal profession involves transactions and issues that are generally routine and follow predictable patterns. While true artificial intelligence remains some way off, “smart systems” are becoming smarter all the time.

As computers are more and more able to take over the basic work, lawyers’ work will be about ‘value adding’. Small firms can take particular advantage of the labour saving smart technology to take care of the more routine matters and save their lawyers’ expertise for where it is most needed.

**Case Study: The “Cyber Solicitor”**

A service described as the “world’s first do-it-yourself service for producing wills and power of attorney documents” won the 1999 CCH Victorian Legal Profession Emerging Technology Award.

The ‘cyber solicitor’ is available via Law Partner’s Internet site and takes clients through a series of questions. The program prompts them for answers and steers them through the instruction taking process in much the same way as a solicitor would in a face to face interview at a desk. At the end of the process, the client is asked to pay for the service by credit card and a will or power of attorney is produced.

The client then executes the document with the instructions provided. To safeguard the process, the firm offers a free checking and storage service for the executed documents.

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439 Law Institute of Victoria Media Release, 19 November 1999
C HOW will legal work be done?

The future is digital for people who deal in knowledge. It is now possible for firms to set up a wide area network to allow solicitors with laptops to dial into the firm’s central system and have access to current matters, archives and email. Correspondence, documents and other resource materials can be scanned and kept with instant access via computer. Once it is transformed to a digital format, information can be stored, copied, encrypted, manipulated and transmitted.

The next phase for worldwide “knowledge firms” is the evolution of a full ‘ebusiness’ that not only sends information via intranets and email but sends bills, accepts payments, organises finance and manages employees on the Internet.

### Case Study: PricewaterhouseCoopers

According to the ecommerce director of PwC Andrew Stevens, that firm will be the first fully wireless Internet firm. PwC aims to move all of the global firm’s business into an intranet/Internet system that can be accessed remotely. Stevens states that the point of digital, wireless and Internet is instant connectivity and the compression of “distance, matter, space” across the global workplace.

The firm will be paperless in five years. Connection will be 24 hours a day and accessed via palmtops, mobile phones and computers on car dashboards. Databases can take over the role of case management. For people working in the digital world, there are no relevant time zones. Teams can be assembled with team members in a different office, state, or even in a different country.

D FOR WHOM will legal practitioners work?

Modern reality is that no one has employees – each person in your team is more accurately viewed as a volunteer. They don’t have to stay with you if they don’t want to.

The year 2000 was an extremely busy time in the private practice legal market, with demand for high quality lawyers outstripping supply. Major and leading medium size firms are operating at capacity and are recruiting in almost all areas. This shortage of quality lawyers is leading to an increase in headhunting, with firms in Sydney and Melbourne continuing to poach solicitors from the smaller jurisdictions.

Lawyers are now quite mobile, and whole offices will now defect to other firms. Retention of staff and fostering loyalty will become a big issue if firms are to retain practitioners’ knowledge and commitment. One interviewee noted that the quality of young graduates was such that expectations could be extremely high, but that those expectations may be very short lived.

The competition for talent is not confined to law firms. Interviewees noted that there is an increased tendency for top students to select law as a good generalist degree rather than because of a passion for legal practice. Graduates are no longer looking for a career in the law, but seek a range of experiences both inside and outside the

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441 Davidson, Robert, “Staff Retention Strategies”, Proctor, July 2000, p18
442 Mahlab, op cit
legal profession. While they may start their careers in a big firm, there is always a risk that these graduates will see something more interesting in another industry and leave the profession with very little warning.

Young solicitors with no particular commitment to practising law are also happy to use their qualifications outside traditional practice. A survey by PriceWaterhouse Coopers found that over 50% of lawyers working as corporate counsel had graduated since 1990. Some young lawyers are also eschewing stability and going to dotcoms. Accounting firms are actively and aggressively recruiting lawyers, particularly in the middle to low end of the market. Merchant banks and other financial institutions are also recruiting, offering salaries that law firms cannot match.

Increased mobility both within the profession and in and out of the profession is not necessarily a negative thing. One interviewee noted that there are benefits in a turbulent employment market, and that solicitors with hybrid experience from a number of firms are valuable.

As already noted, many will be able to choose to work for themselves as a freelance operator rather than being tied to any particular firm or business structure. The fact that barristers are self employed allows greater possibility to regulate lifestyle. One interviewee stated that s/he had made the choice to move to the Bar because of a lack of desire to be locked into a firm’s structure rather than because of a burning desire to be an advocate. The interviewee noted that technology means that constant physical presence in chambers is not required: telephone calls can be diverted and email received at remote locations.

Case Study: i>path

i>path eliminates the partnership structure but uses web technology to reproduce the infrastructure and resources of a large national firm. The organisation provides all the resources necessary to conduct practice, including 24 hour technical support and billing systems, fee collection, marketing and research.

Clients can approach i>path either by telephone or over the Internet. The organisation then selects the most appropriate lawyer to provide the advice needed. Lawyers have been drawn from top tier New York firms and in house positions. Fees are 30-50% below traditional top tier firms.

i>path primarily handles day to day operational needs and small to medium sized transactions, leaving the “big ticket” items to the large firms. Clients have ranged from new media companies and start ups to larger, established companies. They have also developed a number of mutually beneficial referral relationships with large firms.

i>path’s CEO Mark Harris believes there are strong incentives for practitioners to be more responsive, as they are building their own book of business through i>path. “We’ve found that greater independence means happier attorneys which, in turn, means happier clients”.

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444 Lester, op.cit
WHERE will legal practitioners work?

Just as the informational contents of the workplace are increasingly likely to exist in electronic rather than physical form, so too can we observe that workplaces themselves are beginning to dematerialise.447

The globalised world means globalised employment opportunities. Junior lawyers in fields such as tax, intellectual property and e-commerce are highly prized. Young people today are brought up to accept casual employment and lack of job security as a fact of life. The corollary is that they expect mobility, and won’t allow loyalty to a particular firm to affect their career decisions.

Many interviewees mentioned that lawyers with 4-5 years experience are looking for work overseas. Australian lawyers are much sought after in London and Australia is seen as “human quarry” for these firms. Australian firms cannot compete with the salaries on offer in London. Large international firms moving into Asia are also expected to seek skilled graduates from Australia.

Globalisation and advanced communications technology mean that a practitioner can work for anybody in the world from the comfort of his or her living room. Lawyers no longer physically need offices, and legal practice from a car is now possible. Phones can be re-routed, voicemail can be accessed remotely and email can help streamline communications between home and office. Being out of the office does not have to pose a problem for clients.

Case Study: Telecommuting

When UK employment solicitor Brian Leah asked Manchester firm Cobbetts whether or not he could move to Cumbria and work from home, the firm wrote to his 30 main clients and asked them what they thought. All replied and only two were negative. Mr Leah now works from home and travels to the office one day per week, when he sees his clients. Clients call him via the firm’s switchboard and when transferred are unable to tell whether he is at home or in the office.

6.3 CHALLENGES FOR THE PROFESSION

A Having a Life

The associates in the large firms cannot play the piano or paint a picture or act in a church play because they simply don’t have the time. The tragedy is that, in the end, the single minded drive towards winning the competitions at the firm will make these young lawyers not only less useful citizens, less interesting human beings, and less successful parents, but also less good as lawyers, less sympathetic to other people’s troubles, and less valuable to their clients.

The most significant change in the demographic profile of the profession over the last 15 years has been the increase in the number of female solicitors, both in absolute and proportional terms. The changing gender balance in law firms will necessarily have an effect on the organisational culture of firms. The ‘political’ question for law firms is no longer whether, but when and to what extent, organisational change will occur. At some point, the discussion of who is responsible for problems must give way to consideration of what can be done about them.

An appropriate balance between one’s professional and personal life is an essential element of quality of working life. Law firms need to encourage partners and employees to find a sustainable balance between the professional and the personal. This balance is not only of benefit to the practitioner: if the profession is to develop a client focus it needs to be much less isolated. As noted by Justice Catherine Branson, “why would anyone think that young legal practitioners, isolated in this way from the community that they are ultimately asked to serve, will know and understand the values and aspirations of the many segments of that diverse society?"

Many practitioners are making a conscious decision to cut back on time spent on their career to rebalance their lives, spend more time with family or pursue passions outside work. Such “downshifters” are forgoing financial reward to improve their quality of life.

Having a life is not just about law firms developing ‘family friendly’ policies: all employees need a balanced life. Firms instead need to establish appropriate ‘work-life’ policies that concentrate on balancing the demands of work with a broader range of personal issues across the life cycle.

448 Horn, op.cit
449 Victoria Law Foundation Volume 1, op.cit, p1
450 Branson, “Women Lawyers or Lawyers Who are Women”, Women Lawyers Association Annual Dinner, 1999
451 Long, op.cit
452 “Work-life Q & As”, Work and Family, No 17, August 1998, p3
B  Improving Work Practices

Given that law continues to attract some of the nation’s finest young minds, it must be considered a waste of young talent if individuals are leaving the law for what might be called the ‘wrong’ reasons. That is, their frustration with the workplace…This is a loss for both the profession and for the young people involved. It is a loss too, for the wider community if the legal profession continues to reflect a rather narrow segment of society.\(^{453}\)

Statistics show that women are disproportionately represented in those areas of law outside private practice – the community sector, government, academia and the corporate sector.\(^{454}\) It is no real surprise that female legal practitioners are found in much greater proportions outside the traditional “profession”. These employers are significantly more forward thinking in their approach to employee relations and flexible work practices than the average private law firm. In the Law Society of New South Wales *Family Responsibilities Study* government organisations scored best on the ‘Family Friendly Index’. Law firms scored much lower than both government and corporate sector organisations.\(^{455}\)

Flexibility of work practices is very important, particularly for those with family responsibilities. The evidence is clear that ignoring the family responsibilities of employees will have a negative impact on the overall profitability of a business.

In seeking better "quality of life", practitioners are not just asking for fewer hours of work. More predictable hours, a more manageable lifestyle, and the quality of work itself are all important factors.\(^{456}\)

Part Time Work

We have one woman partner working part time out of 250 solicitors. (She) won’t be taken seriously any more, she is a token liberal gesture and there would be an expectation that she would come back full time…In years gone by she would have had to resign her partnership. To take that away from her (today) would have created a public and internal relations disaster. They have tolerated this aberration of work practices (but) they’re not welcoming the situation.\(^{457}\)

Conventional wisdom used to be that part time work was incompatible with “professionalism”. This is starting to change. In some top tier firms, up to 15% of professional staff are working part time.\(^{458}\)

It is primarily women lawyers who work part time. Part time workers tend to be concentrated in community legal centres, government and small private practices. However, it is not only parents with child care responsibilities that are interested in part time employment. In a recent survey of South Australian practitioners, lifestyle reasons and the fact that part time work would allow for other interests accounted for

\(^{453}\) Law Society of Western Australia & Women Lawyers of Western Australia, op.cit, p40
\(^{455}\) Law Society of New South Wales, October 1998, op.cit, p76
\(^{457}\) Bourke, 2000, op.cit, p52
\(^{458}\) Buffini, op.cit, p31
almost 70% of reasons given for wishing to work part time. Only 18% gave childcare as a reason.\textsuperscript{459}

Results in the same survey show that part-time work is seen to be:

- More productive;
- Provide as effective service as full time work;
- Not disruptive to firm activity; and
- Beneficial to firms.

Studies dealing with flexible work practices in the professions have observed that permanent part time positions are difficult to obtain, most often arising from renegotiation of a full time job by the practitioner themselves. It has also been noted that part time positions are generally unavailable at senior levels, and that women must return to full time work if they wish to progress their careers.\textsuperscript{460}

Part time work can be facilitated in a number of ways:

- Job sharing, where two practitioners share one position. This is usually accomplished with two practitioners of similar expertise, but could also work where a job comprised a combination of complex and routine tasks that could be divided according to seniority. Voicemail and recording messages are efficient methods for co-ordinating work.
- Reduced hours and pro rata salary.
- Reduced client base, where work time is decreased by lowering of client pressure. (However, this does not suit everybody, as time demands can still be unpredictable.)\textsuperscript{461}

Whether part time arrangements work effectively will depend on the firm’s definition of “full time”. As noted earlier in this Discussion Paper, most solicitors are expected to work considerably longer hours than average workers, and a “part time” workload in a legal firm could easily amount to the equivalent of a full time workload for most jobs. It is much easier to define part time work if there is an accepted and open performance standard that relies on outcomes, not hours spent at the desk, as a benchmark.\textsuperscript{462}

The success of part time arrangements will also depend on the degree of acceptance by the firm involved of the legitimacy of such arrangements. As already noted, traditionally part time work has been seen as incompatible with “professionalism”. Such views are often based on an assumption that clients will not accept part time professionals. Firms need to take responsibility for selling the concept to clients, including creating solutions for urgent needs such as having a back up attorney available. Clients can be more accepting of, and enlightened about, part time employees than law firms anticipate, particularly because part time employment is, of course, common outside the legal profession.

\textsuperscript{459} Law Society of South Australia, August 1999 \textit{op.cit}
\textsuperscript{460} Bourke, 2000, \textit{op.cit}, p52
\textsuperscript{461} Victoria Law Foundation Woodger & Beaton, \textit{Facing the Future Vol 2: Gender, Employment and Best Practice Issues for Law Firms} p35.
\textsuperscript{462} Will, Kriss, “Temporary/Part Time Attorney’s are Great (for a little while)”, \textit{Legal Management}, May/June 1999, p40
\textsuperscript{463} \textit{Ibid.}, p44
**Telecommuting**

As noted in Section 6.2E, new technology provides the opportunity for legal practitioners to work from home. As an information based profession, law is in some ways well suited to telecommuting. However, the possibility of telecommuting raises particular issues for the legal profession related to client confidentiality and the security of online transactions. Telecommuting generally also raises a range of issues that need to be addressed including:

- Occupational health and safety;
- Expectations of 24 hour service;
- The removal of the distinction between work and leisure.

A year 2000 Toshiba advertisement is symptomatic of another potential problem of telecommuting. It suggests employees who show initial symptoms of contagious illness should immediately be sent home, where they can telecommute until they are better and not infect healthy workers. It does not suggest that sick employees should recuperate at home. As the ad’s slogan says “it’s a new world out there”.

Advances in technology present both an opportunity and a potential problem to barristers seeking to develop or manage a practice that involves working from home. A barrister may in theory be able to conduct some, or even all, of his or her work from a well equipped home office. Such arrangements can also place barristers at a disadvantage because success at the Bar depends, in part, on opportunity. In order to find and exploit professional opportunities a barrister must maintain close working relationships with solicitors, clients, clerks and other barristers. In order to develop, expand and maintain a successful practice, most barristers must maintain a fairly constant physical presence at the Bar. Maintaining a presence at the Bar is particularly important to newer members, who are also more likely to benefit from flexible working arrangements. Whether and how these competing factors can be balanced is an important challenge.

**Contract Employment**

Contract employment is another alternative to conventional practice for individual lawyers. Some lawyers work as “freelance” lawyers, hiring their services primarily to other lawyers rather than clients. Some of these practitioners specialise in particular types of work. Others remain generalists, doing research, court appearances or other work as required. This option is attractive to young practitioners, but senior practitioners with specialist skills could also adopt this mode of practice.  

Freelance law has implications for practising certificates, professional indemnity insurance, confidentiality and conflict of interest issues. As it is the individual lawyer who carries these ethical responsibilities, these issues can be resolved.

**Expanding Leave Categories**

Providing a better range of leave categories can also assist staff balance work and personal life more effectively. The public sector is an attractive option for many graduates because of the broad range of leave categories available to accommodate the employee’s lifestyle needs and choices. These include:

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464 Canadian Bar Association, op.cit. p48
Carer’s leave to deal with sick family members;
Paid maternity leave;
Study leave;
‘48/52’ leave, allowing employees to take an additional 4 weeks leave by amortising the cost over the whole year;
Long service leave.

Providing Alternative Career Paths

In law firms there is only one traditional career path and it lead to partnership. Growth in firm size, more solicitors and competing lifestyle choices means this career path may no longer meet the needs of all firms or all solicitors...Creating new titles is not enough. The firm needs to create a culture that recognises success in forms other than partnership. Alternative career paths are not there for ‘those who have not or can not make it’. They should reflect the diversity of ambition within the firm.

Five or ten years ago, achieving partnership was the ultimate mark of success for a solicitor. Today, partnership offers are actually rejected by some practitioners.

Volume 2 of the 1996 VLF Study discusses the need to develop alternative career paths for those who do not wish to move towards a proprietary interest in a legal practice. The VLF makes the following suggestions for developing new titles and career paths:

Within the partnership model, there is room for salaried partners and part time partners;
For those not wishing to pursue partnership, a Special Counsel position which recognises a solicitor’s high professional standing and expertise in a particular areas of practice;
The title Mentor recognises the time consuming educative role played by some practitioners (including responsibilities for continuing legal education);
A Legal Manager could be involved in the firm’s administration in areas such as human resources, management and marketing;
Legal coordinators are recognised for their organisational and people skills and co-ordinate large projects.

C Improving Corporate Culture

The prevailing business model of law firms incorporates its human resources as more or less expendable components of a revenue production machine. Workers are assumed to have uni-dimensional lives, putting job and career first, last and everywhere in between. When parts of the machine wear out, you replace them. The availability of parts is assumed to be practically unlimited. The strategic equation is that ‘more work for the same pay equals more profit’. The character of the process is ‘recruit, exploit, discard’.

It seems that many of the work practices and attitudes towards more flexible work practices are a product of an entrenched corporate culture, aspects of which do not necessarily serve the interest of the legal profession, law firms, young lawyers or the community. However, supportive corporate cultures depend on daily expression of

465 Victoria Law Foundation Volume 2, op.cit, p27
466 Ibid, pp27-8
467 Victoria Law Foundation Volume 1, op.cit, pp60-61
values and appropriate behaviour, not just pieces of paper. A recent survey of 
Australian employers and employees has shown that, while flexible policies and other 
incentives are important, they don’t make up for a lack of leadership or poor direction. 

Meeting the Human Needs of Lawyers

Give them love...Recognition is the number-one factor for retention anywhere in any 
industry, and I think it goes without saying that it’s something that has been lacking in 
law firms.

In a recent study of Generation Xers to determine what they were seeking in a job,
salary was ranked 80th. Job satisfaction was at the top of the list, followed by 
recognition and diversity of work/special projects.

Meeting the intellectual need for stimulation is critical. Offering a challenging 
workplace is also important. If ‘bright young things’ are employed, they want to be 
stimulated. According to a survey by one of Australia’s largest legal recruiters, 80% 
of lawyers who look to change work are doing so for quality of work reasons.

The VLF Effective Practices Guide cites the following factors as enhancing the 
intellectual challenge for solicitors:

- Ensuring quality is not compromised by time and cost. The issue of a perceived 
  emphasis on time, cost and output rather than quality of work, is one of the key 
  workplace issues facing the profession.
- Assigning appropriate and varied work types based on factors such as skills, 
  preferences, willingness to accept responsibility and availability;
- Offering opportunities to change work types;
- Assigning challenging roles in teams;
- Providing professional development opportunities.

Creating a culture of “ownership” is a key part of this process. It is important to 
establish a structure and culture where everybody takes responsibility for decisions in 
their own job because they understand their importance to the firm, not because they 
believe they are being watched.

Mentoring and Supervision

If you have strong leadership in any corporate environment, people will follow. People 
will want to work with you and for you, and I think that is lost in law. All law firms 
struggle with leadership and management, and that will have a huge impact on 
retention as well.
Recognition and feedback can also be more important than money. Lack of recognition can contribute to job dissatisfaction and the eventual decision to resign. Young lawyers will say big firms are only as good as the partner they are working for. According to the Western Australian survey, day to day recognition of achievements was variable, and depended largely on the interpersonal skills of the supervising partner.475

A common theme among interviewees was the need for law firms to improve the leadership skills of senior partners. Despite the general satisfaction with current legal education standards, being an effective legal practitioner takes more than a theoretical understanding of law and legal procedure. One interviewee noted that, in some smaller firms, economic pressures have meant that junior solicitors are simply expected to hit the ground running. Without the benefit of appropriate supervision and mentoring, such solicitors do not develop appropriate skills in client and case management. A recent survey has also shown that lack of mentoring and guidance is an important reason for lawyers wishing to move. Partners were viewed as good lawyers, but bad managers.476

By contrast, there is a perception that larger firms may supervise junior solicitors too much, offering little chance for creativity and independence. One interviewee noted that law as practised in the large firms traditionally follows a “command structure”, and that this type of environment does not suit the independent spirits of today’s young practitioners. Close supervision is in fact not a substitute for genuine mentoring and coaching, and has the tendency to frustrate and blunt young lawyers rather than develop their skills.

**Valuing Outcomes**

The key action priority is for firms to decrease the emphasis on profit and billable hours and, in this context, increase the attention given to building better trust and respect, more effective leadership, loyalty to employees and to service delivery and the quality of work. It is a matter of changing the balance of emphasis between all of these things, not of concentrating solely on one or another of them.477

A primary obstacle to realistically balancing work and family commitments in law firms is the means of remuneration. Tying revenue directly to billable hours makes the relationship between work time and financial incentives very tangible.478 The single most significant factor driving many experienced practitioners to become corporate counsel is the ubiquitous law firm time sheet. Time based charging simply does not reward a lawyer’s skill or efficiency, nor does it measure whether or not the lawyer has done a good job for the client.479

While ignoring billable hours is clearly not a viable option in the short term, there still remains a need for firms to move away from billable hours being the be all and end all in determining success. The VLF Study found that the following values were most important to solicitors:

475 Law Society of WA and Women Lawyers’ Association of WA, op.cit
476 Priest, March 2001, (Story 539), op.cit
477 Victoria Law Foundation Volume 1, op.cit, p53
478 Law Society of New South Wales, October 1998, op.cit, p77
479 Ryan, Michael, op.cit
An appropriate balance between profit, service delivery and quality of work;
- Trust and respect in the firm;
- Effective leadership;
- Loyalty to employees.  

**The way forward**

Organising our lives, and reserving a proper space for a full and rounded existence as a human being, is one of the big challenges facing the legal profession of this country. Humanising the life of the legal profession is a demand that can be postponed no longer.

This Chapter includes a range of suggestions for improving work practices that can be taken up by individual firms. However, it appears that here may be a need for some national leadership if the profession as a whole is to improve.

If such problems existed in many other industries, work practices would be corrected by the provision of minimum employment standards. Indeed, there have been efforts in New South Wales for some time to establish an award for employed solicitors. In the absence of mandated minimum standards, a set of national employment principles in the form of either recommended minimum standards or benchmarks of best practice should be developed.

Some work has already been done in this regard. The New South Wales Young Lawyers have developed a Code of Practice and the Law Institute of Victoria Young Lawyers’ Section has recently concluded a set of guidelines dealing with work practices and lifestyle. The Law Council’s Equalising Opportunities in the Law Committee is also developing a draft employment contract.

The promulgation of national principles would be of considerable assistance to medium and smaller firms that do not have the resources to develop them internally. They would also assist in alleviating the costs associated with high staff turnover and the drain of experienced lawyers from the profession.

**D The Older Practitioner**

There is...disturbing evidence that unemployment is bad for your health...people who stop working before they wish to may suffer poorer health than those who can choose their own time for retirement.

While the legal profession is, in general terms quite young, employment is emerging as a major issue for older practitioners. This is partly because increased life expectancies means greater retirement savings are necessary to maintain lifestyle. The commonly held assumption that older people can be siphoned off into early retirement no longer holds true. Mature age people need jobs for the same reasons that everybody else does: to support current living and save for future needs. The

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480 Victoria Law Foundation Volume 2, op.cit, p3
481 Kirby, 20 August 2001, op.cit
482 Sheen, Veronica, “Focus Firmly on Employment”, Australian Senior, October 1999, p48
fact that many couples are now having children later in life means that older workers often still have dependent children into their early sixties.  

Recent reports have indicated a trend towards older employees being “bullied” out of jobs. This trend is most notable in high tech industries, where older workers are replaced with technology savvy, but lowly paid, younger people. Legal firms in the United States are also pushing out older partners in favour of impatient younger practitioners who will not wait for older partners to voluntarily retire for their ‘turn’.

**Access to Training Opportunities**

Ongoing access to training opportunities is essential for workers of all ages. Often it is assumed that older workers are not interested in learning about new technologies and procedures. This type of assumption simply compounds any technological barriers faced by older workers.

**Case Study: Ementoring**  
Blake Dawson Waldron has introduced a “reverse mentoring” scheme, where younger practitioners are teamed up with senior counterparts to help them become familiar with the Internet and other new technologies.

A pilot program was launched in 2000 involving 30 lawyers, with each pair spending an hour or so each week exploring the Internet as a business transformation tool. The program is now being extended to all 1800 staff.

Blake Dawson Waldron have also introduced ebusiness workshops for all practitioners and intensive sessions with visiting academics. The firm is also promoting work practices such as telecommuting.

**Providing Flexibility**

As already noted, work-life policies should cater for employees at all stages of their career. Flexible work practices outlined above are just as relevant to older workers as younger ones.

Career breaks are one form of flexibility that can assist older workers make the transition to retirement by allowing them to develop and pursue interests outside the law. Often career break schemes allow workers to ‘amortise’ a significant period of unpaid leave over a number of years. They may also enable a fixed period of leave with a guarantee of similar status on return.

The concept of phased retirement, or reducing the number of hours worked approaching retirement, may be an alternative for practitioners whose preference would be to remain in practice. Policies facilitating phased retirement such as part time work, job sharing, career breaks and home based work can assist older practitioners make the transition from the workplace into activities associated with a

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484 West, Andrew, “Oldies bullied out of jobs”, The Sun Herald, 7 May 2000, p36
retirement lifestyle while maximising the practitioner’s contribution to the firm. Offering casual and contract work to retired practitioners can also assist the transition to retirement.

**Valuing Experience**

In Australia…we seem to have somehow taken the view that after 55 neither can one relate to clients nor can one practise law efficiently unless you are totally computer literate.

In the past, partnership hierarchy meant that seniority in partnership led to unwritten “seniority privileges”, such as the right to take an afternoon off each week to play golf. One interviewee noted that younger partners now expect more senior partners to “pull their weight” and seniority did not command respect. This development means that, once partnership is attained, the practitioner has no real advancement opportunities and can simply look forward to many years of hard work.

Older workers bring valuable expertise and a range of work and life skills that can be of significant value to employers. They often demonstrate high levels of commitment, maturity and reliability. Contrary to popular belief, many also have a contemporary knowledge of many technological and other changes.

Phased retirement allows older practitioners to pass on their corporate knowledge to younger workers over a period without the additional burden of a full time legal practice. One interviewee noted that his firm had retained one of its partners after his retirement as a consultant. While this person was not up to date on current law or court practice, his wealth of experience made him a valuable mentor for junior staff and he was treated effectively as the “wise elder” of the practice.

**Reinventing yourself**

We have no other proven skills other than practising law and the truth of the matter is that very few firms plan for the retirement of older partners and in fact the theory seems to be, stick around until you are 65 (provided you are writing fees) do it your own way, and what you do after that is your business.

One senior practitioner noted that he took it as a matter of course that he would have to “reinvent himself” every five to six years. He saw it as a matter of fact that young partners would be introduced to both clients and work by more senior partners, and eventually take that work over. In turn, those younger lawyers would experience the same thing as they progressed through their career. The interviewee noted that it is essential to continue picking up new areas of law and develop new specialities every couple of years to “recharge”.

This ability to reinvent one’s career needs to be translated to retirement. It is obviously difficult for senior practitioners who have devoted a large proportion of their lives to legal practice to face retirement. Older practitioners must ensure that they do have a life outside the law so that they are prepared for retirement.

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488 Ibid, pp16-17
490 Department of Employment, Workplace Relations and Small Business, op.cit, p2
491 Harty, op.cit
E  Challenges for Small firms

Small firms may have limited work scope; limited opportunities for advancement; slightly lower salary scales; and a degree of social isolation. On the other hand, principals with appropriate skills can offer young solicitors a personalized mentoring experience that is typically not possible in the hurly burly of a large practice.\[492\]

A low salary does detract from job satisfaction; however, research shows that level of salary is not a significant factor in retention rates. Job satisfaction factor is going to become increasingly important as younger practitioners work their way through the legal system. In a recent study on performance pay, salary ranked 11th behind such factors as open communication, ability to challenge the status quo and personal growth.\[493\]

Recruitment

Small firm practitioners interviewed indicated that they did not have any trouble recruiting or retaining staff. While they obviously could not offer the salaries offered by big firms, they offered a more personal approach and a better lifestyle. The type of lawyer who is attracted to the “people to people” law practised in small firms is also attracted by these factors. However, despite these positive comments, difficulties remain in recruiting practitioners in some regional areas.

Most lawyers are generally happier when they feel they are providing social value, and lawyers in smaller practices with direct contact with ordinary clients certainly experience this feeling. Many students are largely unaware of the personal satisfaction of practising in this area. Summer clerkships provide a good opportunity for smaller firms to give students a taste of small practice.

Firm Culture

The perceived culture of large firms is unattractive to many new graduates, as is evidenced by the number of young lawyers working outside legal practice. Ironically, it seems that large firms actually need to adopt a small firm culture to ensure that young practitioners do not feel like a mere cog in a wheel.\[494\]

The VLF Study found that in small firms, the causal links between the corporate environment and career intentions were much stronger than in large firms. This means that the same effort at improvement will have a more significant result in a small firm than a large firm.\[495\]

Flexible work practices

The firms which will consider homeworking are those that are forward thinking, and this is something which does not depend on size. Large firms can offer the technical support, but may also feel that if they allow one person to work from home, they will

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492 Lynch, Peter, “Keeping good people – a generational issue?”, Proctor, June 2000, p16
493 Hayes Scott, “Pros and Cons of Pay for Performance”, Workforce, February 1999, 78(2), pp68-73, quoted in Law Society of Western Australia & Women Lawyers of Western Australia, op.cit
495 Victoria Law Foundation Volume 1, op.cit p65
have to offer this facility to all staff. Smaller firms take greater account of individual needs.496

The VLF Study found that small firms rated particularly well in what could be termed the ‘human’ aspects of practice. That is, small firms are much more likely to be flexible and understand the need for balance between work and personal life than larger firms. This is despite the fact that, in practical terms, it is actually more difficult for smaller firms to adopt flexible practices and accommodate individual needs.

The Law Society of New South Wales Family Responsibilities Study found that small firms provide a range of flexible work practices that are innovative given resource and time constraints. By contrast, larger firms have a higher proportion of part time work available but little or no implementation of flexible work practices.497

The cost of flexibility can make many options difficult for small firms. Leave options such as 48/52 options present an opportunity to grant additional flexibility to employees without necessarily involving additional cost to the firm. Small businesses also have greater problems accommodating leave and other workplace changes associated with pregnancy in the workplace. However, problems are not insurmountable if employers can be flexible. Small business can also least afford to absorb the cost of retraining a replacement.

Providing Varied Work
Variety is important, particularly in the early years of practice. Smaller firms may have more difficulty in providing young lawyers with the variety to enable them to develop a broad range of skills and an understanding of different areas of practice. This may require exchanges between smaller firms.

497 Law Society of New South Wales, October 1998, op.cit, p27
6.4 SUMMARY OF CHALLENGES

A CHALLENGES FOR FIRMS

- Developing human resources policies reflecting an appropriate work-life balance for staff at all stages of their careers, issues such as included expanded leave categories, flexible part time work policies and telecommuting.
- Developing a range of alternative career paths.
- Ensuring partners have appropriate leadership and mentoring skills.
- Ensuring all staff have career development opportunities, access to training opportunities and variety of work.

B CHALLENGES FOR PROFESSIONAL BODIES

- Developing minimum standards or benchmarks for employment related issues such as hours of work; telecommuting
- The unavailability of demographic information such as ethnicity and Aboriginal or Torres Strait Islander descent.
- Assistance to small firms with human resource issues, including developing small firm interchange programs and assisting small firms with recruitment.
The legal profession has had a good, hard look at itself over more recent years. There are so many opportunities out there for the legal practitioners with their training to be able to enhance both their practices and the services that they can provide to their clients, if some reform of the regulations relating to the way legal practices are conducted were to take place.

As we move into the globalised 21st century, national borders are becoming less relevant. The World Trade Organisation is working towards removing unnecessary barriers to the international trade in services through the implementation of the General Agreement on the Trade in Services (GATS).

Despite the fact that national regulation is giving way to international standards, the Australian legal profession continues to be regulated on a State and Territory basis. The regulatory structures in the States do not share much in common. Each jurisdiction has a unique approach, which creates a series of problems, making moves towards a uniform or national approach to the regulation of lawyers more complicated.

The differences between jurisdictions have developed for understandable reasons when viewed in a historical context. These include the different times of establishment of institutions, different techniques for funding, and differences over the years in the success of various models adopted. It is nonetheless doubtful whether such an approach will continue to be viable ten years from now.

This chapter commences by providing an overview of the regulatory regimes currently in place in the States and Territories. Section 7.2 discusses recent developments both in Australia and internationally in the regulation of the legal profession. Section 7.3 discusses the possibility of national regulation of the profession. Section 7.4 discusses the role of the Law Council of Australia.

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498 Graeme Samuel, Chair, National Competition Council, quoted in Murphy, Cherelle, “How the leopards changed their spots”, Australian Financial Review, 13 October 2000, p35
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499 ACT Barristers do not require a practising certificate
500 ACT Barrister do not have access to this scheme because they do not hold practising certificates.
501 Power to suspend practising certificate for up to 12 months. Supreme Court can strike off.
502 Reprimand or fine only. Supreme Court can strike off.
503 Titled “Legal Services Commissioner”
504 Power to suspend practising certificate for up to 2 years. Supreme Court can strike off.
505 Queensland Barristers do not require a practising certificate
506 The Law Society issues practising certificates as the agent of the Supreme Court
507 Power to suspend practising certificate for up to 3 months. Supreme Court can strike off.
### Table 24. Regulation of the Legal Profession

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<td>Legal Practitioners Act 1981&lt;br&gt;Legal Practitioners Regulations 1994&lt;br&gt;Professional Conduct Rules</td>
</tr>
<tr>
<td>TASMANIA</td>
<td>Legal Profession Act 1993&lt;br&gt;Rules of Practice</td>
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<tr>
<td>VICTORIA</td>
<td>Legal Practice Act 1996&lt;br&gt;Solicitors’ Practice Rules&lt;br&gt;Victorian Bar Inc Practice Rules</td>
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7.1. **CURRENT REGULATORY STRUCTURES**

**A State Regulation**

*Table 23* sets out some of the key features of regulatory structures governing the legal profession in the States and Territories. Regulatory activities are supported in most jurisdictions by State and Territory Acts and Regulations, as well as by Rules of Conduct and By Laws of law societies and bar associations. The principal regulatory instruments are set out in *Table 24*.

Self-regulation of the legal profession has long since disappeared in Australia in favour of approaches that involve the government, the profession and the courts in regulatory activities over lawyers. The courts, and in particular the Supreme Courts in each jurisdiction, have an important role derived from inherent jurisdictions, although some powers have been given statutory recognition.

In most jurisdictions, there is a system of co-regulation that actively involves both the Government and the profession in the regulation of lawyers. In Western Australia and South Australia, the profession now has a limited role and the regulation of lawyers is principally conducted by statutory bodies.

Four jurisdictions (Tasmania, Queensland, Victoria and New South Wales) each have an independent legal “ombudsman” (known in New South Wales as the Legal Services Commissioner). These officers have wide ranging powers to receive and investigate complaints and prosecute disciplinary offences. They also play a general role in supervising and monitoring disciplinary and complaint processes.

**B Commonwealth Regulation**

In recent times, the Commonwealth Government has relied on its constitutional powers to support the establishment of new regulatory regimes covering certain service providers. In addition to the mixture of powers that support the *Trade Practices Act*, which include the corporations power, the Commonwealth Government has used its power in relation to taxation and immigration to support licensing regimes for tax agents and migration agents.

Lawyers are required to be licensed under these Commonwealth schemes and are unable to rely on their status as barristers or solicitors to practise in these areas of Commonwealth responsibility. It is conceivable that, in the future, the Commonwealth might seek to use certain other of its powers to support regulatory regimes in areas such as family law. These regulatory structures operate separately from those administered by State Governments and constitute a significant additional requirement on those lawyers who wish to provide legal advice and assistance in areas such as taxation and migration law.

**C Co-operative Regulation**

Any proposal to develop strategies for national regulation of lawyers such as the establishment of a national regulatory body must be sensitive to the constitutional issues and the political realities of Australia’s federation. The Commonwealth Government does have constitutional powers that it can use to support the regulation of lawyers in some areas, for example, lawyers providing taxation or immigration
advice. However, it needs to be acknowledged that its powers are limited and not plenary.

For this reason, agreement has been reached between representatives of State Governments and the Commonwealth for national approaches that have proceeded on a co-operative basis. This has been preferred to other possible approaches which could have involved the ceding of powers by the State Governments to the Commonwealth or the passage of legislation through the Commonwealth Parliament in a more aggressive strategy based on the full extent of its constitutional powers.

**Mutual Recognition**

An early example of a co-operative approach was the development of mutual recognition legislation that was implemented in all jurisdictions within Australia. This legislation was not confined to lawyers but extended to professions generally. It was designed to make possible the transportation of professional skills from one jurisdiction to another without an individual having to meet further educational or training requirements. Accordingly, a lawyer admitted and practising in one jurisdiction was able to establish an entitlement to practise at an equivalent level in another jurisdiction without having to undertake unnecessary additional requirements. Whilst mutual recognition did assist to break down barriers between States, it fell short of meeting the expectation of those who wished to practise law nationally.

**The National Legal Services Market (NLSM)**

The NLSM Blueprint[^509] developed by the Law Council in 1994 and endorsed by the Standing Committee of Attorneys General, has been implemented in New South Wales, Victoria, the Northern Territory, the Australian Capital Territory and South Australia and is under consideration by other jurisdictions.

The legislation provides for a portable national practising certificate regime that applies, subject to certain restrictions, in participating jurisdictions. Itinerant interstate lawyers are able to practise in participating States relying on their home practising certificate, insurance arrangements and fidelity fund contributions. Coverage of that solicitor’s activities remains a responsibility of the home State. Interstate lawyers who establish offices in host jurisdictions have to meet additional requirements that impose additional impediments to interstate practice. These may include holding additional professional indemnity insurance and contributing to the fidelity fund of the visiting jurisdiction.

**D Harmonisation**

As already noted, the legal profession is regulated through a combination of legislative instruments and rules developed by professional bodies. The Law Council and its constituent bodies have taken significant steps towards harmonising state and territory based rules of conduct in recent years. The process began with the development of the Law Council’s NLSM Blueprint. The fundamental policy basis of

[^509]: A copy of the Blueprint can be downloaded from the Law Council’s Website: [http://www.lawcouncil.asn.au/policies.html](http://www.lawcouncil.asn.au/policies.html)
the Blueprint is that a lawyer admitted in any State or Territory should be able to practise law throughout Australia with few restrictions.

In December 1998, the Law Council adopted three important policy positions on issues stemming from the National Competition Policy Review. These were the policies on multidisciplinary practices, reservation of legal work and federal professional standards legislation.

Each of these policies has, as its central tenet, the protection of consumers interests and the maintenance of legal ethics and accountability. In relation to reservation, for example, the policy is that only core areas of legal work should be reserved where consumer interest is best served by qualified practitioners undertaking that work. Other developments have included Model Rules of Professional Conduct and uniform national admission requirements.
7.2 THE DEREGULATORY ENVIRONMENT

A National Competition Policy Review
Following the Trade Practices Commission 1994 report on the legal profession, initiatives have progressively been taken to apply provisions in the *Trade Practices Act* to the legal profession. Agreement was reached at the Council of Australian Governments that the *Trade Practices Act*, especially its provisions dealing with restrictive practices and fair trading, should apply to the legal profession. As a result, the Australian Consumer and Competition Council has broad regulatory authority over the legal profession in so far as its activities might infringe provisions in the *Trade Practices Act*.

Part of the Council of Australian Governments agreement involves the application of competition policy principles to the legal profession. State Governments have agreed to review local legislation, including that dealing with the regulation of lawyers, to ensure that any requirements comply with competition policy. At the time of writing, reviews had been completed in New South Wales and Victoria and were underway in Queensland, South Australia, Western Australia and the Australian Capital Territory.

The traditional comprehensive regulatory model has been significantly modified by these reviews. Reforms to the profession are ongoing, with unnecessary or antiquated restrictions, monopolies and anti-competitive practices being systematically scrutinised. Regulations survive competition policy reviews only when Governments are satisfied that they are essential to protect the public. Where the requirements are not in the public interest they are often removed or their impact reduced. This rigorous approach was found in the Trade Practices Report into the legal profession and in the competition policy reviews undertaken by State and Territory Governments.

Regulatory requirements will probably continue to cover key areas such as legal education and admission requirements, eligibility for admission, licensing, the conditions under which lawyers practise, complaints and their investigation, legal fees, trust account requirements, practice rules and trust account regulations. However, outside these fields it is important to question whether regulation is in the interest of the public or of the profession.

B The General Agreement on the Trade in Services (GATS)
In the past decades, international trade in legal services has grown as the economy has internationalised. Lawyers increasingly face transactions involving multiple jurisdictions as their corporate clients engage in cross border transactions. Providing a seamless service to clients across jurisdictional boundaries is a high priority.

Services, including legal and other professional services, were included for the first time in the Uruguay Round of multilateral trade negotiations. The GATS is the first multilateral agreement to provide legally enforceable rights to trade in all services.

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The broad principles of the GATS are the foundation of multilateral trade in services. These include non discrimination, freer trade, predictable, transparent policies and encouraging competition. World Trade Organisation members have committed to applying these principles to trade in services and to creating a more open trading environment.

Under Article 6 of the GATS, the Council for Trade in Services may establish “disciplines” for individual services to ensure that local licensing regimes are *inter alia*:

(a) based on objective and transparent criteria, such as competence and the ability to supply the service;
(b) not more burdensome than necessary to ensure the quality of the service; and
(c) in the case of licensing procedures, not in themselves a restriction on the supply of the service.

Generally speaking, legal services around the world are relatively closely regulated and restricted. In comparative terms, regulation of the legal profession in Australia falls somewhere in the middle. According to a recent study published by the Productivity Commission comparing 29 nations, Australia scores reasonably well on permitting the practice of foreign law. Interestingly, Australia is seen as a relatively restrictive regulator of domestic practice, largely due to the extensive restrictions on business structures, on ownership, and reservation of categories of work for lawyers only.\(^{511}\)

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\(^{511}\) Nguyen-Hong, Duc, *Restrictions on Trade in Professional Services*, Productivity Commission, Australia, August 2000
7.3 THE FUTURE REGULATION OF THE LEGAL PROFESSION

A Why National Regulation

National regulation has only assumed importance in the last decade with the growing need to remove obstacles to cross-border legal services. This has coincided with the international focus on freeing up trade in goods and services between countries and the development of national business activity within the Australian economy.

The 1994 Access to Justice Report noted that the separate regulatory regime in each State and Territory and the differences between these regulatory structures “have hindered the mobility of legal practitioners within Australia, impeded interstate competitiveness, and inconvenienced clients with interstate or national interests.”

Despite moves towards harmonisation, currently, there are regulatory discrepancies between the States and Territories as to:

- The decision making processes concerning who should be admitted to practise law;
- The ethical standards lawyers should maintain;
- What disciplinary proceedings should be taken against lawyers who do not uphold these standards;
- What content – and how – law students should be taught; and
- What controls and requirements should be placed on fidelity funds and trust accounts.

Inquiries that have examined national regulation have concluded that a national council on legal services or some other body should be convened to look at the feasibility of establishing a national regulatory body. For example, the Australian Law Reform Commission raised for consideration a national regulatory body to overcome such regulatory differences. Since then, the Law Institute of Victoria and Law Society of New South Wales have both signalled that there is a need for a body to be responsible for nationally regulating the legal profession.

It is important in the first instance to identify the type of regulatory regime being contemplated. There are essentially two options to consider:

- the establishment of institutional arrangements which would facilitate the setting of enforceable essential national practice standards which would be administered by the existing State and Territory regulatory bodies; or
- the establishment of a national regulatory body to administer a comprehensive regulatory model.

Whatever form it would take, national regulation must seek to achieve the following objectives:

513 Australian Law Reform Commission Discussion Paper 62, op.cit
Ensure that the legal profession is governed by requirements which are not unduly restrictive or anti-competitive and which serve the public interest;

Ensure establishment of a national legal services market in which lawyers are able to practise nationally without having to incur unnecessary cost or comply with additional regulatory requirements;

Create a market for legal services which will promote efficiency within the legal profession, enable it to better service clients' needs, and enhance its prospects of entering the global legal services market and exporting of legal services; and

Create a more accountable legal profession that is focussed on the needs of clients and is not protected by antiquated regulations which are not open to public scrutiny, based on monopolies and lead to unnecessary cost to clients.

B Towards a National Profession

There is a level of support within the profession for a single national regulatory body, particularly among the larger firms. The current regulation of the profession is frustrating the formation of national firms; however, most interviewees believe that by 2010, there will be a single national profession. Many believe that this will ultimately be a statutory regime rather than a self regulatory one.

Some successful harmonisation has been achieved through the co-operative approach of the Law Council’s National Practice Taskforce. However, the process has been perceived as slow by many and significant barriers to national practice still remain despite this work.

It is unrealistic to expect that the complex, sensitive issues involved can be resolved quickly. These issues include the role of the State Supreme Courts, the constitutional difficulties in the Commonwealth regulating the profession, the funding of the national regulator and the nature of any remaining State/Territory based regulatory functions. This is not to say that this should not be an aim in the longer term. If the profession is to reach this stage by 2010, it will be necessary to begin moving towards this goal at a speed that will be acceptable across the profession.

The First Steps: A National Standards Setting Body

Under this approach, State and Territory professional bodies, governments and courts would continue to regulate lawyers' compliance with national standards and to fulfil their other regulatory roles within their jurisdiction. Essential areas are:

- Common entry standards for admission;
- Uniform professional indemnity insurance, minimum cover and terms;
- Uniform fidelity cover and terms;
- Uniform trust account requirements;
- Uniform professional standards schemes which apply to federal law;
- Ability to operate nationally through a variety of optional business structures; and
- A national register of practising lawyers.

This approach has numerous advantages.

- Lawyers would be able to practise throughout Australia on a national basis without having to meet onerous and expensive requirements in different jurisdictions;
Its achievement would continue the co-operation between State Governments and the Commonwealth;
There would be no need for the Commonwealth to test the limits of its constitutional powers;
State Supreme Courts would continue to exercise their influence over the legal profession as admitting authorities relying on their inherent powers and statutory obligations;
State regulatory regimes would continue to deal with those areas where a national approach was not necessary;
State Governments would remain principally responsible for the regulation of the profession; and
State regulatory bodies and professional associations would continue to be involved in co-regulatory regimes enjoying the unique funding arrangements.

Among these issues, priority should be given to developing a uniform approach to professional indemnity insurance and fidelity cover, provided that there is no disproportionate disadvantage to any law society or bar association or its members. Both areas are critical to national practice and their current State based nature is a formidable hurdle for those lawyers, especially solicitors, wishing to practise across State and Territory boundaries.

Uniformity in relation to fidelity cover is unlikely to be achieved unless State and Territory Governments agree to abolish the separate State and Territory fidelity funds and facilitate the introduction of fidelity insurance with national cover and uniform terms and conditions.

**National Regulation**

As noted, many areas of regulation of legal practice differ between jurisdictions. The issue arises whether comprehensive regulation of all features of legal practice should be attempted or only the development of a minimalist regulatory regime. A minimalist approach:

Would remove the control and powers currently exercised by professional associations and government bodies involved in regulatory activities or reduce these to an absolute minimum. It may require certain levels of education to entitle admission as a lawyer but thereafter would play virtually no role in controlling the profession, leaving that to the market place;

Would inevitably result in legal professional associations becoming voluntary bodies, perhaps leading to a proliferation of such associations providing a minimal level of control over their members through rules and the application of essential regulation requirements should there be any left;

May not require lawyers to be insured against professional negligence, maintain a fidelity fund regime or proscribe rules relating to the maintenance of trust accounts, and would provide no mechanism for consumer complaints.

While there is still work to be done removing restrictions, the Law Council does not believe that a free market approach is appropriate in the regulation of the legal profession. For example, the Law Council considers that lawyers should carry compulsory professional indemnity and fidelity insurance in the interests of consumers. A proposal for full regulation by a national regulatory body must also address issues such as -
Constitutional questions and limitations;
The structure within which national regulation will operate and whether there is to be any remaining State based regulatory activity;
A series of political considerations which are not easy to unravel given that State based regulation is complex, involving powerful agencies and individuals;
Funding - State regulatory regimes often involve unique funding arrangements with the cost of regulatory activities variously supplemented by allocations from solicitors' trust accounts, State Government appropriations, and practising lawyers' contributions. Consideration should be given to what savings (if any) could be made by the pooling of currently duplicated resources and activities.

Any national regulatory body would require statutory backing and appropriate funding arrangements to be developed. It would almost certainly involve a referral of powers to the Commonwealth to be truly comprehensive.
7.4 The Role of the Law Council

A national profession is essential. A truly national representative body is also necessary if the legal profession is to have an effective influence on government. To the present date, the Law Council has played an important role in relation to the development of policy relating to a national profession such as the national legal services market and initiatives concerning foreign lawyers. It is perhaps timely to consider the Law Council’s current effectiveness and possible role for the future.

A As a Lobbyist

There are many aspects to this issue. The Law Council represents a considerable intellectual capital resource with the specialist expertise available within the various committees of the law societies and bar associations and the Law Council Sections. On general policy and technical issues, the Law Council’s views are sought by the Federal Government and its agencies and by Commonwealth Parliamentary Committees. In this context, the Law Council will continue to be a body of influence.

The Law Council has an ongoing access to justice program including a commitment to adequate legal aid funding. Outcomes from its lobbying efforts in these areas usually reflect the political priorities of the Federal Government of the day. Federal governments with strong economic rationalist credentials do not generally share the Law Council’s views on issues like legal aid funding and the importance of legal representation. To be effective, it will be necessary for the Law Council to present its arguments in an economic rationalist context; for example, that inadequate legal aid funding represents a cost shifting from one area of government to another and may in fact result in the need for greater public sector funding.

The Law Council in recent years has taken a generally progressive view with regard to national competition policy issues and other micro economic reform agenda issues. The Law Council has tended to lead the debate in a number of these areas relating to the legal profession and generally is able to work co-operatively with government in terms of influencing outcomes.

The Law Council has also been able to work productively with the Federal Government and its agencies in relation to the improvement of the international performance of Australia’s legal and related services.

B As a facilitator

Part of the Law Council’s role is to facilitate communication between the individual law societies and bar associations.

The Law Council has recently expanded its role in this area by taking on a “clearing house” function in relation to the national competition reviews discussed above (Section 7.2) on behalf of law societies and bar associations. This will ensure that the expertise and experience gained in one jurisdiction can be shared and utilised in later reviews. The Law Council is also developing a “National Practice Database” to enable law societies and bar associations to quickly compare rules dealing with a range of practice issues, including advertising, complaints and discipline, practising certificate requirements.
C National Journal

Many interviewees commented that the profession lost an important part of its national ‘voice’ when *Australian Lawyer* was downgraded from a full journal to a newsletter. This decision was made in October 1997, when the Law Council announced that it would no longer produce *Australian Lawyer* as a full journal. The decision was made on the basis that it was no longer financially viable to publish the journal in that format.

While the newsletter has served its purpose, the response of interviewees suggests that it is time for the Law Council to reconsider this issue. The Law Council has established a working group to review *Australian Lawyer*. The review will include examining the option of using the Law Council website as a vehicle for a more regular, electronic publication.
7.5 SUMMARY OF CHALLENGES

A CHALLENGES FOR PROFESSIONAL BODIES

National Regulation
- Develop an agreed position on a national standards setting body.
- Develop proposals for uniform standards for:
  - admission;
  - minimum cover and terms of professional indemnity insurance;
  - trust account requirements; and
  - professional standards schemes.
- Consider developing a proposal for fidelity insurance with national cover and uniform terms and conditions.
- Consider the implications and practicalities of developing a national register of legal practitioners.

Law Council Role
- Develop a national strategy to improve the public image of lawyers.
- Consider changes to the format of Australian Lawyer.
APPENDIX A:

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APPENDIX B:

BIBLIOGRAPHY

ARTICLES AND PAPERS

“DIY legal ethics courses available”, *Law Talk*, No 562, 4 June 2001, pp4-5
“Firms unite in legal coup”, *The Adelaide Advertiser*, 4 December 2000, p59
“The Internet: Magnet or Vortex?”, *The Weekend Australian*, 26-7 February 2000, p41
“Law firms recognising family needs”, *Law Talk* Vol 529, 18 October 1999, p9
“Linklaters, Mallesons talk merger”, *The Australian*, 17 October 2000, p33
“Need to incorporate? Get on the Internet, fill in the cyberforms, start your printer”, *Canberra Times*, 16 August 2001, p14
“Queensland Lawyers Looking to Leave”, *Lawyers’ Weekly*, 15 December 2000, p1
“Stop signs on the Web”, *The Australian*, 18 January 2001, p2

Adamson, Judy, “Pregnant Pause”, *The Sydney Morning Herald*, 1 April 2000, pp1-2
Annan, Koffi, “Globalisation must benefit all”, *Canberra Times*, 14 December 2000, p9
Ashby, Allison, “How to land, and retain, the elusive generation X”, *Business Review Weekly*, 2 June 2000, pp82-3

Bagnall, “Born to be wired”, *The Bulletin*, 15 August 2000, p24-49


Blaxell, Justice Peter “The Future Role of Australian Courts in Resolving International Disputes”, *Reform*, Issue 76, 2000, p12


Bourke, Juliet “Getting to the heart of career progression”, *NSW Law Society Journal*, August 2001, pp6-7


Bourlioufas, Nicki, “Australian and Canadian lawyers have edge in cyberspace”, *The Legal Insider*, 23 November 2000, [www.lexislegal.com](http://www.lexislegal.com)


Brand, Vivienne, “Has there been a decline in the reform of law teaching in Australia?”, unpublished paper presented at Commonwealth Legal Education Association Conference 2000, Adelaide 12-14 April 2000


Brennan, Sir Gerard, “Profession or service industry: the choice”, Australian Bar Association Conference, New York, 18 August 2000


Breusch, John, “Shape up or get out of town”, Australian Financial Review, 12 July 2000, p14

Breusch, “In house work is a slowing trend”, Australian Financial Review, 12 July 2000, p14


Burkeman, Oliver, “Get a life”, Sydney Morning Herald, 9 December 2000, p30

Burns, Christine, “(When) will we be replaced by virtual lawyers”, New South Wales Law Society Journal, Vol 38 No 6, July 2000, pp68-70


Campbell, Duncan “Many governments tapping emails”, The Canberra Times, 21 August 2000, p16


Chan, S “E-commerce is redrafting rules of the game for law firms”, LawTalk, Volume 547, 4 September 2000, p10


Colvin, John, The Impact of Electronic Commerce on Knowledge Professional Services, Eagenda ’99 Conference, Sydney, 17 November 1999


Cooke, Graham, “Paving the way for everyone to have their day in court”, The Canberra Times, 5 August 2000, pp2-3


Dator, Jim, *The Dancing Judicial Zen Masters*,

Davidson, Robert, “Staff Retention Strategies”, *Proctor*, July 2000, pp18-19


Demuth, Christopher, “Count your blessings and failings”, *The Australian*, 23 May 2000, p25


Elliott, Michael, “Globalisation is Good for You”, *The Bulletin*, ???, p100

Ellis, Stephen, “All good things must dotcom to an end”, *The Australian*, 20 January 2000, p28

Ellis, Stephen, “Digital discord is music to lawyers’ ears”, *The Australian*, 1 June 2000, p30


Fleming, Jeremy “Magic circle firms sign up to first Internet-only law firm”, *Law Society of England and Wales Gazette*, Vol 97 No 18, 5 May 2000, p18


Gawler, Michael, “President’s Column”, *Law Institute Journal*, December 1999, p3


Gleeson CJ, Hon Murray, “Are the professions worth keeping?”, Greek Australian International Legal and Medical Conference, 31 May 1999


Gottschalk, Petter, “Use of IT for Knowledge Management in Law Firms”, 1999 (3), *Journal of Information Law and Technology (JILT)*


Haslem, Ben, “Court help for litigants without lawyers”, *The Australian*, 6 December 2000, p7


Hayes, Simon, “Lawform puts its case to aid lawyers”, *The Australian*, 1 August 2000, p47

Head, Beverley “Workers of tomorrow or slaves of technology?”, *Business Review Weekly*, 14 July 2000, p54

Herron, Mark “Impediments to culture reform”, *Law Institute Journal*, Vol 74 No 3, April 2000, p20


James, David, “The world is going global: what will it look like?”, *Business Review Weekly*, 4 August 2000, pp130-134


James, David “Political Eclipse”, Business review Weekly, 17 November 2000, pp208-212

Janssen, Peter “Law @ the speed of value”, Presentation to Law Council of Australia, 2 September 1999

Kaletskey, Anatole, “Ecommerce is dead”, *The Australian*, 7 February 2000, p40


Ketchell, Misha, “Lawyer offers free legal advice on the Net”, *The Age*, 7 July 2000, p49


Kirby, Justice Michael, “Engines of Progress Pose Incredibly Complex Challenges”, *The Australian*, 16 March 2000, p13


Kirby, Justice Michael, The crimes they are a-changing”, *Canberra Times*, 23 February 2001, p11


Lane, Bernard, “Click here for legal advice”, *The Australian*, 11 December 2000, p11

Lauritsen, Mark “The Computer as a Lawyer Saving Device”, *ABA Law Practice Management Magazine*, Nov/Dec 1999


Lester, Leon “Costs giving house teams the edge”, Australian Financial Review, 17 August 2001, p49


Lightstone, Susan, “A piece of the action”, National, Volume 9 No 6, October 2000, pp85-6


Lynch, Peter, “Keeping good people – a generational issue?”, Proctor, June 2000, pp15-16


McGlone, Francis & Rowell, Carol, How the Use of Information Technology Can Assist Students Studying Law Externally, Commonwealth Legal Education Association Conference 2000

Meek, James, “Race to patent genes ‘out of control’”, Canberra Times, 16 November 2000, p12

Merritt, Chris, “All rise! The virtual e-Court is in session”, Australian Financial Review, 23 February 2001, p37

Mizzi, Anne, “The hour of reckoning”, Law Society of England and Wales Gazette, Volume 97 No 38, 5 October 2000, p84

Monk, Sue, “Merger strategy for law firms”, Brisbane Courier Mail, 4 December 2000, p27

Mullerat, Ramon, “Professionalism versus Commercialism: do Lawyers still want to be a Profession”, International Bar News, September 2000, pp5-6


Murphy, Katherine, “Outsourcing has no limits”, Australian Financial Review, 24 May 2000, p11


Nash, Kate, “Legal eagle blows in”, Adelaide Advertiser, 18 November 2000, p70

Papademetriou, Dr Demetrious, “New Approaches Required to Meet the Challenge of Demography”, BCA Papers Vol2 No 1, April 2000, pp38-42
Pidgeon, David, “The Internationalisation of Legal Practice”, *LawTalk* No 529, 18 October 1999, p10


Priest, Marcus, “Victorian young lawyers turn to activism to beat daily grind”, *The Legal Insider*, 22 November 2000, [www.lexislegal.com](http://www.lexislegal.com)


Richardson, Jane, “The places for growth”, *The Australian*, 14 March 2001, p44


Rudd, Kevin, “Global good not global greed”, Sydney Morning Herald, 27 July 2000, p15
Saltai, Chloe, “The changing family”, The Sunday Age, 6 August 2000, p9
Saville, Margot, “Lawyers facing up to realities of the world”, Sydney Morning Herald, 22 January 2001, p33
Shaw, Jeff QC, “Former Attorney General reflects on the practice of law in the new century”, NSW Law Society Journal, Volume 38 No 11, December 2000, pp70-72
Sheen, Veronica, “Focus Firmly on Employment”, Australian Senior, October 1999, p48
Simmonds, Professor Ralph, Funding for Law Schools in Australia, a Briefing Paper prepared on behalf of the Council of Australian Law Deans (CALD) for a meeting with representatives of the Law Council of Australia, Sydney, 16 December 1999
Spigelman CJ, Hon JJ, *College of Law Graduation Ceremony Occasional Address*, 8 November 2000


Thomas, Tony “Globetrotter builds the all powerful legal firm”, *Business Review Weekly*, 18 February 2000, p76


Tolhurst, “Outsourcing may not be the cheapest solution”, *Australian Financial Review*, 6 August 2000, p15


West, Andrew, “Oldies bullied out of jobs”, *The Sun Herald*, 7 May 2000, p36

White, Joy M “Trendsetters: Pioneers in the New World of Law Practice”, *ABA Law Practice Management Magazine*, July/August 1999


Will, Kriss, “Temporary/Part Time Attorney’s are Great (for a little while)”, Legal Management, May/June 1999, pp39-48

Williams AM QC MP, Hon Daryl, “Judges must conduct their own defence”, Australian Financial Review, 27 April 2001, p57

Williams, George, “Toward a better justice system”, The Canberra Times, 7 August 2000, p9


Zekos, Dr George I, “Internet or Electronic Technology: A Threat to State Sovereignty?”, 1999 (3), The Journal of Information, Law and Technology (JILT)

**BOOKS**

Fox, Russell, Justice in the Twenty-First Century, Cavendish Publishing Limited, Sydney, 2000


Law Council of Australia, Australian Legal Directory, AUSDOC, 1999

McInnes & Marginson, Australian Law Schools after the 1987 Pearce Report, Canberra; AGPS, 1994


Susskind, Richard, Transforming the Law, Oxford University Press, United Kingdom, 2000

**REPORTS**

Access to Justice Advisory Committee,

American Bar Association
Committee on Research about the Future of the Legal Profession, Preparing for the Future, June 1997

Initial report: Technology 2000, 9 March 1999
Appendix B: Bibliography

**Australian Bureau of Statistics**
- *Births, Australia 1999*, No 3301.0, November 2000
- *Use of Internet by Householders, Australia*, August 1999
- *Use of Internet by Householders, Australia*, June 2000
- *Survey of Legal and Accounting Services 1995-96*, November 1997

**Australian Capital Territory Law Society**

**Australian Corporate Lawyers Association**
- *Ethics for In House Counsel*, June 2000

**Australian Law Reform Commission**

**Australian Law Students Association**
- Submission to the Australian Law Reform Discussion Paper 62
- Submission to the Higher Education Review Committee, 24 April 1997
- Comment Pertaining to Deregulation of Universities and Its Impact upon Legal Education

**Australian Professional Legal Education Council**
- *Standards for the Vocational Preparation of Australian Legal Practitioners*, 1997

**Canadian Bar Association**

**Centre for Legal Education**
- *The Australasian Legal Education Yearbook 1997*
- *The Australasian Legal Education Yearbook 1998*
- *The Australasian Legal Education Yearbook 1999*
- Karras, Maria & Roper, Christopher, *The Career Destination of Australian Law Graduates*, March 2000,

**Committee of Australian Law Deans**
- *Studying Law in Australia 2001*

**Commonwealth Tertiary Education Commission**
Department of Employment, Education Training and Youth Affairs
Vignaendra, Sumitra, Australian Law Graduates Career Destinations, May 1998

Department of Employment, Workplace Relations and Small Business
Guide to Issues for Older Workers, Commonwealth of Australia, Canberra, 1999

Griffith University
Dewar, Smith and Banks, Research Report on Litigants in Person in the Family Court of Australia, May 2000

Illinois CPA Society
Illinois Business Executive’s Opinions on Multidisciplinary Practices,
http://www.icpas.org/icpas/business/MDP.htm

Industrial Relations Research Centre (University of New South Wales)
Bourke, Juliet, Corporate Women, Children, Careers and Workplace Culture, University of New South Wales, 2000

Institute of Chartered Accountants in Australia,
“Global Business Professional Designation Proposed”, Media Release, 7 April 2000

Justice Research Centre
Hunter, Rosemary, Legal Services in Family Law, December 2000

Law Council of Australia
Submission to the ALRC, Issues Paper 21; Rethinking Legal Education and Training, 29 July 1998

Law Institute of Victoria
Career Patterns of Law Graduates, c1993
‘Cyber Solicitor’ Takes Out Legal Technology Award, Media Release, 19 November 1999
Thriving and Surviving, Young Lawyers’ Section, April 2001

Law Society of New South Wales
Professional Regulation Taskforce Report, 1997
Family Responsibilities Study, October 1998
Profile of the Solicitors of New South Wales, 1999
Quality of Life in the Legal Profession, 1999
Profile of the Solicitors of New South Wales, 2000

Law Society of South Australia,
Survey of Part Time Work Practices, August 1999
2000 Survey of Members, October 2000

Law Society of Western Australia
Report on the Retention of Legal Practitioners, (in conjunction with Women Lawyers of Western Australia) March 1999
Young Lawyers Salary Survey 2000, September 2000
Legal Information Standards Council
   *Best Practice Guidelines for Australian Legal Websites*, 1999

Mahlab
   Recruitment Survey 2000
   Recruitment Survey 2001

National Pro Bono Taskforce

NSW Department of Women
   Keys Young Research, *Research on Gender Bias and Women Working in the Legal System*, March 1995

Office of Fair Trading (United Kingdom)
   *Competition in the Professions*, Director General of Fair Trading, March 2001,

Organisation for Economic Co-operation and Development
   *Guidelines for Consumer Protection in the Context of Electronic Commerce*, 1999

Productivity Commission
   Nguyen-Hong, Duc, *Restrictions on Trade in Professional Services*, Productivity Commission, August 2000

Supreme Court of Western Australia,

Trade Practices Commission
   *Study of the Legal Profession*, March 1994

Victoria Law Foundation
   Herron, Mark, *Facing the Future Volume 1: Job Satisfaction Survey*, 1996
   Woodger & Beaton, *Facing the Future Vol 2: Gender, Employment and Best Practice Issues for Law Firms*

The Victorian Bar
   *Equal Opportunity for Women at the Victoria Bar*, September 1998

Victorian Law Reform Committee
   *Technology and the Law*, May 1999

Victorian Women Lawyers Association
   *Taking up the Challenge*, May 1999

Women Lawyers Association of Tasmania
WEBSITES

American Bar Association Law Centre for Professional Responsibility
http://www.abanet.org/cpr

American Bar Association Law Practice Management Section
http://www.abanet.org/lpm

American Bar Association Elawyering
http://www.abanet.org/elawyering

American Bar Association Seize the Future (now defunct)
http://www.futurelaw.com

Australian Corporate Lawyers Association
http://www.acla.com.au

Australian Institute of Judicial Administration
http://www.aija.org.au

Australasian Legal Information Institute
http://www.austlii.edu.au

Canadian Bar Association
http://www.cba.org

Centre for Legal Education

Commonwealth Department of Education, Training and Youth Affairs (Which University, Which Course?)
http://www.detya.gov.au

Commonwealth Department of Employment, Workplace Relations and Small Business (Work and Family Unit)
http://www.dewrsb.gov.au

International Bar Association
http://www.ibanet.org

JILT: the Journal of Information Law and Technology
http://www.law/warwick.ac.uk/jilt

Federation of Law Societies of Canada
http://www.flsc.ca

Law Foundation of New South Wales
http://www.lawfoundation.net.au

Law Society of England and Wales
http://www.lawsociety.org.uk

Legal Technology News
http://www.legaltechnology.org

Lexis Legal, The Legal Insider
http://www.lexislegal.com/aus/news

New South Wales Government Legal Resources Site
http://www.lawlink.nsw.gov.au
OUT-LAW
http://www.outlaw.com

Policy.com The Policy News and Information Service
http://www.policy.com

Probono.net
http://www.probono.net

Victorian Law Foundation
http://www.viclf.asn.au

World Trade Organisation
http://www.wto.org