

Our Ref: ANA:
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3 November 2009

By email: mlavarch@gut.edu.au

Professor The Hon. Michael Lavarch
Chair
National Legal Profession Consultative Group

Dear Michael

National Legal Profession Consultative Group – Comments on Task Force's Paper "The Regulatory Framework: A National Legal Profession"

1. At Kerin's suggestion, I provide a letter summarising some thoughts which I did not have time to explore at our stimulating Consultative Group meeting on 14 October, and that I have had subsequently, for transmission to members of the Consultative Group and the Taskforce.

2. I make these comments from my personal perspective only, but from a background which includes:

- Chairman of Piper Alderman since 1999. Piper Alderman was initially an Adelaide based firm, but in the last 10 years has expanded into Sydney, Melbourne and Brisbane successively, and is about the 25th largest Australian firm.
- former managing partner of Piper Alderman, for 5 years.
- President of The Law Society of South Australia, 1995-1996, and a member of the council of the Society for about 10 years, and various other committees.
- Law Society nominee on the SA Legal Practitioner Education and Admission Council (LPEAC) since its inception in 1999.
- President of the Law Council of Australia 2001/2002.
- subsequently, chairman of LCA Professional Ethics Committee and the Model Conduct Rules Review Working Group, and currently member of the LCA's National Conduct Rules Reference Group.
- member of the Advisory Board of the University of Adelaide School of Law.
- acted for and against lawyers and firms in professional

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negligence matters.

- acted for practitioners on disciplinary charges.

Preliminary

3. I am strongly in favour of a single common system of regulation for the Australian legal profession of totally uniform and simpler content nationally, but with local administration and decision making regulation of the system, and local profession input into both the national legislative content and local administration and regulation. Benefits to the profession and consumers will flow from such a system, and probably even if 55 or more regulatory bodies remained to administer the system.
4. The particular structure eventually chosen for national regulation, as well as the particular content of national legislation, should be assessed against guiding objectives and principles including those set out on pages 14-18 of the Taskforce's background paper dated 20 August 2009, and in particular the structure and each provision should be assessed against the touchstone of reducing costs for lawyers and consumers. This is an assessment which must be made at various stages of our process.
5. As to that assessment,
 - 5.1 with both the structure and the content, the devil will be in the detail, and the detail will affect costs and benefits. Thus, my views expressed in this letter are preliminary views which might be revised with more detail if other structures can be shown to be less costly and more effective;
 - 5.2 the mere fact that there may be what is felt to be a large number of regulators should not be a strong negative in the assessment, or reason for structural change – see the next section, a continuum of regulators;
6. However, I agree with Martin CJ¹ that it is also necessary to weigh in the assessment the immeasurable community benefit that lawyers with their current values and structures bring as necessary assistants to courts, as independent servants of and advocates for people and companies against opposing forces, and as supporters of the rule of law. It does seem to me that the background paper, at page 15, and elsewhere, and other papers, tends to underestimate this benefit.
7. Further, I suggest that to maintain the benefits which the legal profession bring to the community, it is necessary for the legal profession and its representative bodies to be and remain strong and independent, and that reforms which tend to undermine such strength and independence should be eschewed.
8. Also by way of general preliminary comment, at the end of this letter I make some general comments in defence of the reputation of the legal profession and of legal profession and co-regulation, which impacts on some of the following specific

¹ in his recent paper to the Conference of Regulatory Officers of 16 September 2009, "The Future of Regulating the Legal Profession: Is the Profession Over Regulated?", which agrees on this point with an earlier paper by Spigelman CJ.

suggestions.

A continuum of regulators

9. While I agree that the consumer of legal services, especially the first-time consumer, needs to have a simple and clearly understood avenue for complaint/information about the lawyer which cannot be resolved or obtained from that lawyer, I suggest that the total number of regulatory agencies in itself is not a significant reason alone for nationalisation of legal professional regulation, or for significant reform.
10. On the contrary, I suggest that all members of the profession know in general terms that throughout their likely professional life they will have to deal with a succession of bodies, including:
 - the law school, and the law school's university, for obvious qualification reasons;
 - their PLT institution;
 - Judges of the court, on formal admission, they first having had their application for admissions scrutinized by separate administrative body (in SA, this is the Board of Examiners) who makes a recommendation to the Judges;
 - their professional body – for practice licensing, profession/life long support, education and information, and representation on negotiation on vital practice issues like compulsory PII;
 - a service or conduct complaints handling body, and then a tribunal or court – if they have the misfortune to experience a complaint;
 - a PII claims handling body, and then a court – if they have the misfortune to have a PI claim;
 - Judges of the court again, on striking off, or another disciplinary body for offences of lesser seriousness.
11. This continuum of regulation, and of the bodies who are the providers of the regulation, is well understood in the legal profession. All of the providers have a well understood and natural place, and are seen to exercise this natural function well. Lawyers will also understand in general terms that all these bodies would have their own management and governing bodies, constitutions and procedures, and could well be subject to policy and procedural directive from a national body or from some higher body, without lawyers in general needing to trouble themselves with the details of these matters behind the surface.

The nature of national legislation under Taskforce models

12. First, I suggest the uniform legislation which I hope is produced at the end of our process should contain much more of the detailed regulation than I think may be envisaged by the Taskforce, on any of their models. The legislation should contain the

basic standards on many important regulatory topics, rather than have these standards be set, from time to time, by a SCAG-appointed, unelected central body of as yet unknown composition, however eminent and numerous.

13. Thus, the uniform legislation should contain the regulatory structure and basic standards, and uniform regulations should contain detailed standards, for:-
 - 13.1 admission: the legislation would set out the requisite academic and PLT qualification, and the other standards for admission, and for accreditation of courses of universities and other institutions providing courses, and for recognition of overseas qualifications. The legislation should mandate, and have annexed to it, uniform admission rules – which should be the current uniform admission rules with any agreed variations, and adapting to the terminology of and the bodies set up in the uniform legislation;
 - 13.2 practising certificates structure and entitlements: uniform regulations covering application and renewal mechanics should be developed as part this process. The legislation would also outline the mandatory CPD requirements, for the administration of which there would be uniform regulations for local administration.
 - 13.3 professional conduct: the legislation should provide that Australian lawyers must comply with the Australian Solicitors' Conduct Rules (currently being developed by the Law Council of Australia soon to be released for comment) and the Australian Bar Association Rules (also currently being reviewed), both sets of rules being refinements of the LCA's Model Rules of Professional Conduct and Practice 1997;
 - 13.4 business practice; including reservation of legal work and titles, mortgage financing prohibition, requirements for trust money and trust accounts (and the uniform legislation should mandate a set of uniform trust account regulations based on those painstakingly developed by the LCA and professional bodies, adapted to the uniform legislation), cost disclosure, billing and costs assessments, management of fidelity fund claims, legal practice interventions and external management, the regulation of business structures, restrictions on practising while bankrupt, requirements for custody and destruction of client documents, and professional indemnity insurance. (On the detail of the nature of the uniform content required on some of these topics, I generally agree with most of the LLFG suggestions in Robert Milliner's letter to you of 16 September 2009).
14. It is important that these key standards, which are features of the legal profession, should be accessible in one place, and that practitioners and the public should have the certainty that they are not able to be changed except by legislation.
15. I believe any new legislation should resolve as many as possible of the substantive issues which are not currently uniform rather than leave their resolution to later – many in the legal profession have spent many hours in the last 15 years wrestling with these issues, and would accept that there is not necessarily one "right" solution to many of them, and that on the whole it would be better to have one uniform national solution

rather than seven individual attempts at perfection.

16. It is important for those members of the profession seeking to practice nationally that effort be made to resolve these issues in the commencing legislation and regulation. From my firm's point of view, the factors which inconvenienced us most in national expansion, and which still cause us significant expense which could be avoided, are the lack of uniformity in regulation of trust accounts and PII. For our part we are not troubled by the different bodies with whom we have to deal, or the number of them, whether 55 or some other number – although uniform nomenclature for bodies exercising the same function would help. (And see the continuum section generally.)

No delegation power

17. I also suggest that new national legislation should commence without any non-elected body, whether National Legal Services Board or other body, having the power to delegate regulatory functions to any existing or new regulatory bodies, which implies a power to withdraw that delegation i.e. I disagree with the Taskforce's model 1. Instead the legislation in each jurisdiction would nominate existing legal bodies to carry out regulatory decision-making. (I flesh this out in the following alternative model section.)
18. To confer a delegation power on a national board would inevitably bring with it sooner or later a requirement to have a sizeable bureaucracy to support the board, the justification being so that members of the Board could gain a proper appreciation from its staff about how well or poorly a delegated agency was performing operationally in order to perform the Board's monitoring or reviewing function in relation to delegation. It would be a similar justification for the staff needed if the board had decision-making functions in day to day regulation.
19. Further, for the reasons expressed in paragraphs 6-8 and the final section of this letter, I would suggest that no sufficient case has yet been made out for substantial change to the identity of the bodies administering regulation in each state, and moreover that to the extent that any change involves diminishing the involvement of the profession in its own regulation, this would be a negative.
20. I do however think it would be of benefit for the legislation to provide some degree of consistency in the structure and governance of each of the bodies designated as regulatory agencies in each jurisdiction. Total uniformity could not be achieved because of differences in coverage and resources.
21. The initial legislative conferral of particular regulatory powers on particular existing agencies which I propose would, I suggest, be reviewed by SCAG, in conjunction with the LCA and other legal profession and public representatives, after say three years of operation. This would be a good occasion to review the legislation as well.

An Alternative Model to Models 1 and 3

22. Clearly some national policy body or bodies will be needed to fill gaps which are not filled by national legislation and regulations.
23. I do not necessarily, however, agree with the Taskforce in its recommendation that

there should be a single top body, the National Legal Services Board, to sit on top of the system of regulation. I think that the following alternative should be considered.

24. With the uniform legislation containing the topics and detail I suggest in paragraph 13 above and identifying the current state regulatory agencies as the bodies to carry out regulation in each jurisdiction for the first (say) three years, I suggest for consideration a uniform national regulatory system which establishes three standard-setting bodies:-
 - 24.1 an Australian Lawyers Admission Board (ALAB), which would accredit for all Australian jurisdictions all Australian legal academic and PLT courses (not institutions), provide guidelines to State Lawyers Admission Examining Boards (LAEB), and recommend and comment on proposed changes to the uniform admission rules and to the professional conduct rules;
 - 24.2 (possibly) an Australian Lawyers Professional Indemnity Insurance Board (ALPIIB), which would approve from time to time schemes of compulsory professional indemnity insurance, and to the extent possible set standards for PI claims handlers (however, this aspect of regulation is difficult, and if the difficulties of a national system have been solved by the recommendations of the LCA Committee chaired by Ron Heinrich, some other structure might be better);
 - 24.3 an Australian Lawyers' Conduct Board (ALCB), which would have the power to lay down binding policies and protocols for handling at the local level of costs, service and conduct complaints, and to mandate performance standards required to be met by State-based complaints handling authorities (State LCB's). It would also have power to recommend and comment on changes to the uniform professional conduct rules. It ought not to have a power of delegation to, or withdrawal of delegation from, State regulatory agencies.
25. The composition of ALAB would be similar to the composition of the Law Admissions Consultative Committee – at the least it should contain a majority of Judges nominated by the Council of Chief Justices, and representatives from universities, PLT institutions, the legal profession bodies or the LCA, and employers. If it has the Australian-wide accreditation function, the need for State bodies like LPEAC could possibly be removed.
26. Both ALPIIB and ALCB should have a majority of lawyers, with people also providing insurance broking/financial management/conduct regulatory experience and expertise as appropriate and, in the case of ALCB, consumer representation.
27. All Board members would be volunteers.
28. To the extent the Commonwealth Attorney-General appoints to these Boards, that should be after consultation with the President of the Law Council of Australia.
29. The national legislation would also lay down reporting obligations and detailed objectives for the guidance of the above national boards, in particular ALCB, and State LCB's.
30. The Boards should each be aware of the other Boards' activities and issues, and

participate in them where appropriate.

31. Responsibility for keeping the National Register of Australian Lawyers could be that of either ALAB or ALCB, with power to delegate to the one agency, for example the LCA, or a consortium of State professional bodies, if they are interested in making a proposal.
32. Admission would still be by State Courts, with applicants being vetted by the local LAEB, applying the uniform admission rules and any policies laid down by ALAB. The local LAEB could be appointed by the Chief Justice of each State or Territory in conjunction with the local legal profession bodies and, comprise Judges and legal practitioners in the majority.
33. Serious disciplinary matters would be heard by State Courts and State disciplinary tribunals as presently constituted, but with uniform powers and, preferably, names.
34. Uniform Australian Practising Certificates would be issued by the local professional body of the applicant's home jurisdiction (defined as at present).
35. The legislation would provide that complaints investigation would be dealt with by the identified, current State based and constituted LCB's, preferably all called the same name or names, but administering uniform legislation and possessing uniform powers, and complying with operational policies, procedures and performance standards laid down by the single national body, ALCB. The profession through its professional bodies should also have substantial involvement in the composition of any board of local people overseeing the local LCB and in the selection of the director of the local body, and a majority of persons on the local board of the local LCB should be legal practitioners.
36. I suggest this model:-
 - 36.1 is likely to be less costly than the Taskforce's model 1 or 3. There is a real danger that a small national legal services board charged under both model 1 and 3 with setting standards in these diverse areas would feel the need for a dedicated and multi-skilled and experienced, and therefore expensive, secretariat to support them. Also, it is likely that members of this NLSB would need to be paid. With a NLSB under option 1, there could be extra pressures for a large secretariat, and even more costs.
 - 36.2 is likely to administer the regulatory system with a better and less remote understanding of the practices, strengths and weaknesses of the profession than the alternatives;
 - 36.3 is likely to better reflect our federal system and allow for wider representation of all jurisdictions – this is particularly important in the first, transition stage and the new national system of regulation;
 - 36.4 will be perceived by the profession as more satisfactorily involving the profession, and accordingly compared to the alternative will have more willing and better quality compliance, and will better attract the high quality pro bono profession contribution currently provided in the current multi-layered

environment;

36.5 will involve less transition and establishment costs.

37. I also suggest that this model recognises better that the principal sub-categories of regulation, namely admission/education, conduct/complaints and insurance are very different, and require different skills and people. I suggest it would be a mistake to think that one small group could acquire sufficient expertise and experience to lay down satisfactory standards in all of these areas, and additionally as mentioned I think it generally undesirable that standards in such important areas be set and/or be subject to change by a small group.

National Legal Services Board

38. If however the Taskforce's models 1 or 3 is adopted, (and I am one of the proponents for at this stage maintaining cost/benefit consideration of both rather than only of model 1), then, for the reasons of maintaining a strong profession, and meaningful profession involvement in regulation, and to seek to address the factors referred to in previous paragraph 36, I submit that:-
- 38.1 the Board should include and probably be chaired by a current or recently retired judge of eminence;
 - 38.2 the great majority of members of the Board should have substantial practising legal profession experience;
 - 38.3 at least one of the members of the Board should be or have had experience as a legal profession body representative;
 - 38.4 the Board should number at least seven;
 - 38.5 the members of the Board, and the principal executive servicing the Board, should only be appointed after meaningful consultation with the President of LCA (at least - it would be expected that the President would in turn consult with State and Territory legal professional bodies and others.) This should be an express legislative requirement.
39. For similar reasons, I also contend that the Board should be legislatively required, before promulgating national standards and policies, to consult meaningfully with the LCA and State legal profession bodies.

Admission

40. In amplification of my proposal in paragraphs 24.1 and 25 above, I would submit that the work of LACC consistently since its inception has generally been of such high quality that as a body it should not lightly be cast aside, despite recent criticism it has attracted from the LCA and others about either the content of the uniform principles suggested for overseas qualifications or the application of these principles.
41. First, the uniform admission rules themselves, and the related appendices A and B, are

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notable creations in helping to maintain the high standards of Australian-qualified lawyers. I cannot think it would be seriously suggested that these rules and documents have not been valuable or that they need to be supplanted by something radically different – although they would benefit from a review, which I understand is proposed, and a wider review than simply consideration of adding statutory interpretation to Appendix A.

42. Secondly, no-one could suggest that the judges who primarily comprise LACC are motivated by anything other than the desire to maintain high standards and protect Australian consumers. By contrast to all other interest groups who comment on LACC's work, such as employers, employees, potential employees, professional bodies and universities and PLT institutions, LACC is impeccably disinterested in the standards it has promulgated. It is also composed of the very top members of the legal profession. These are no small advantages, both actually and in perception.
43. The fact that, clearly, the recent expression of the uniform principles for assessing overseas qualifications has been found in application to need revision, which LACC itself appears to acknowledge, does not detract from the above comments – few if any standard-setters or regulatory agencies operating on a shoe-string budget have not made any mistakes in a decade or so of difficult policy work.

Complaints & Discipline/National Legal Services Ombudsman

44. Whether existing complaints regulatory bodies and agencies would be authorised/reconstituted by enabling State and Territory legislation in each State to undertake the uniform conduct and disciplinary function as a or the State LCB would be a matter to be determined by each jurisdiction as part of this COAG process. Where the governance and structure of an existing State body is consistent with national standards for structure and governance, I would think there would be strong arguments for preserving rather than disturbing the State body personnel and infrastructure.
45. I do not agree with a structure which creates an additional complaints investigation and decision-making figure, the national legal services ombudsman, who is said to be bound to administer standards imposed by the National Legal Services Board, and who can delegate, (and practically would have to delegate), local decision making and investigation to local bodies. This has the potential to be unwieldy and create extra expense, compared to my preferred structure of local bodies, with the same name, administering uniform legislation and with uniform powers, and subject to standards laid down by a representative and specialist board.
46. Flexible complaint handling procedures, and triage systems, (all of which need detailed work to get right and simple) can be and desirably should be contained in the legislation or uniform regulations, (or less desirably mandated by standards set by ALCB), and can then be administered by State LCB's, without the need for an ombudsman to be created.
47. I contend in the final section of this letter that the actual record of current co-regulatory conduct and disciplinary agencies is a reasonable one, and does not justify the complications and expense of an extra figure, an ombudsman. On the other hand, recent experience shows that the creation of an ombudsman, or substantially shifting

emphasis of the background of the ombudsman and other complaints regulators, or the emphasis of the objectives of the scheme, to those of the consumer, does not automatically guarantee an improved complaints handling system or a better system.

Funding of Regulation

48. Funding is one of the most difficult of the components required to be analysed in an assessment of the benefit, or otherwise, of proposed regulatory changes.
49. One reason is that it is difficult to get an accurate handle on funding, because different jurisdictions use different terminology. The Acil-Tasman questionnaire, while capable of providing some useful information, is likely not to get an accurate picture of the situation in every jurisdiction, because of the terms used in the questions. The questions are asked from an NSW/eastern States perspective and assume institutions and concepts which are not necessarily the same in, for example, South Australia.
50. Also, and very importantly, the questionnaire does not attempt to pick up:-
 - 50.1 the number of hours spent on regulatory matters by professional body employees, some of whom have mixed functions, and the costs thereof;
 - 50.2 the number of lawyer-hours donated to the administration of regulation of the profession in each jurisdiction, and to the support of professional body employees, and the value thereof;
 - 50.3 the extent to which these very real and substantial benefits to the consumer might be lost, or would come at a much more substantial price, if the current system of regulation is substantially changed to a more centralized model.
51. On the controversial question of whether interest on monies in trust accounts should be used to pay for part of the costs of regulation of the profession, and other public benefit purposes, the seductive simplicity of the argument that this money belongs to clients and therefore should not be used to pay for lawyers' own regulation needs to be countered with the central fact that it would, in the vast majority of individual cases of client moneys comprising the combined trust account from time to time and in changing amounts and periods, be prohibitively disproportionately expensive to clients for lawyers in each case to spend the time to gain authority from clients as to whether the client wants to earn income and the rate of interest required, and then for lawyers and banks to be required to keep separate accounts for interest earned by each client on monies in trust for each day, and then to account to the clients.
52. On the other hand, if a lawyer is to hold in the trust account a very large sum of money for a client for more than a day or so, or a substantial sum of money for more than a month or so, such that it does become cost-effective for the lawyer to contact the client and arrange for investment of trust money, then the lawyer's basic professional duty to act in the client's interest mandates that the lawyer must raise with the client whether the money in trust should be invested for the client's benefit. The interest earned on money in the combined solicitor's trust account generally is not comprised of individual client moneys to which this basic principle would apply to mandate the investment of the monies in the client's name.

53. There are of course other arguments supporting use of these monies as currently occurs.

Co-regulation has not failed/the reputation of the legal profession

54. Finally, on another general matter, to the extent that an excessively negative view of the public reputation of the legal profession and of the public reputation and/or performance of legal profession-based regulatory bodies is influencing members of the Taskforce in their consideration of recommendations for national professional reform, I respectfully disagree with these negative views, and I put a contrary view.

55. For example, I respectfully disagree with the provocative assertions of the Commonwealth Attorney-General, in his 17 September 2009 address to the John Curtin Institute for Public Policy, that:-

55.1 "the regulation and governance structures that underpin the profession ... have comprehensively failed to adapt to modern demands and expectations,"; and

55.2 there is a "dismal" level of public confidence in lawyers.

56. As to the first point, of course our current system can be improved, but this does not mean that key elements like the involvement of the legal profession in the system of regulation need to be jettisoned or reduced. Any defects in the current system are not necessarily the fault of the lawyers. On the other side of the ledger the regulatory and public benefit achievements of the profession need to be borne in mind, for example:-

56.1 the LCA and its professional bodies have since 1994 strongly and consistently advocated for a national and competitive profession, and uniformity;

56.2 the LCA and its constituent professional bodies, with the aid of countless volunteer lawyer hours, have done a lot of the hard work in settling the content of uniform national principles and regulation in various areas, for example:-

- (a) the LCA's initial blueprint for a national legal practice in 1994;
- (b) the LCA's development of model professional conduct rules, first promulgated in 1997, reviewed in 2002 and 2008, and currently subject to a further review in 2009, which will lead to Australian Solicitors' Conduct Rules and revised Bar Rules – the content of these model rules has been very substantially adopted in most States and Territories;
- (c) the LCA has facilitated, and judges, legal academics and legal practitioners have developed through LACC, uniform admission rules very substantially adopted in all jurisdictions;
- (d) the LCA has facilitated, and professional body employees have developed, uniform trust account regulations;
- (e) the LCA's committee on national professional indemnity insurance has

begun to resolve the remaining practical questions about how to achieve consistent national coverage.

- 56.3 in all this, I suggest the LCA and its member constituent bodies have been united, transparent, flexible and sympathetic and responsive to public and government expectations – more so, I would suggest, than professional bodies in other countries.
- 56.4 the profession and profession representative bodies encourage public and community service. Lawyers provide more than proportionate composition of all sorts of worthy bodies from parliaments to school councils, and the governance of many not-for-profits. A very substantial amount of pro bono legal work is done by a wide range of practitioners. (These activities are often unfortunately not adequately recorded, or widely publicised, or are taken for granted, and are not likely to be known or remembered by respondents to a Roy Morgan survey).
- 56.5 the record of the disciplinary regulatory bodies in which the profession has involvement has, over the years, been a reasonable one, both absolutely and by comparison with bodies where the legal profession is not so involved. For example, no-one could accuse the NSW Bar Association of being "soft" or slow to act in relation to barristers not meeting their tax obligations, or on individuals like Marcus Einfeld. Practitioners subject to the current disciplinary systems regularly complain that lawyer – regulators are tougher than others they have experienced. On the other hand few if any regulators could have detected or prevented apparent frauds like the Magarey Farlam and Bradfield misappropriations.
57. As to the second point, the Attorney cites the June 2009 Roy Morgan survey of the most ethical and honest professions. As to that, many things could be said, including:-
- 57.1 the responses to the survey are no doubt conditioned by the respondents' direct or hearsay experiences of lawyers in action, which in turn will often be affected by the essential nature of the activity the lawyers are involved in for this purpose. Unfortunately for lawyers in this context,
- (a) practising lawyers often prominently deliver unpopular or annoying messages, and act for unpopular and annoying people and companies;
 - (b) lawyers have a prominent (but secondary role) in litigation and disputes, which is adversarial, and which no-one enjoys, and where there is inevitably at least one disgruntled party, sometimes very disgruntled;
 - (c) it is therefore easy to find litigants who will complain about lawyers, and lawyers' costs, but who are really essentially unhappy with their experience of the litigation system, not the system of lawyer regulation – witness the selection of a small number of anonymous general comments from a small number of public submissions to the 1997 WA Law Reform Commission on litigation costs, which are also referred to by Mr Wilkins in his 2009 speech to the NSW managing partners.

- 57.2 by contrast, the most "trusted" professions in the survey are the health professionals who save our lives and cure us (nurses, pharmacists, doctors, dentists), and teachers, who look after and educate our children, all of which are activities thereby arousing warm feelings of gratitude. The public no doubt also recognises that most nurses, teachers and GP's are comparatively lowly paid. Further, the funding of medical services is such that the public does not have to write out a large cheque to the person delivering the service, or any cheque in the case of nurses and school teachers, as opposed to lawyers who both do the work and send the bill, which does not attract any subsidy. All of this could well contribute to a less than optimum comparative ranking of lawyers;
- 57.3 the responses to the survey will also no doubt be conditioned by reportage of others' comments and views about lawyers. In SA, and probably in other jurisdictions, lawyers as a whole have been the target of sustained populist belittling and criticism by leading politicians;
- 57.4 despite all this, lawyers were ranked in the survey ahead of public servants, financial planners, public opinion pollsters, federal MP's, State MP's, directors of public companies, business executives, stockbrokers, talkback radio announcers, TV reporters, union leaders, insurance brokers, estate agents, newspaper journalists, advertising people and car salesmen. (No questions were apparently asked about merchant bankers, managed investment schemes promoters, property developers and other occupations). I would assert that this comparative ranking is not "dismal";
- 57.5 a mark of the high opinion the public has for the legal profession essentially, when it is not seen as advocating an unpopular cause or receiving a large sum of money directly, is that State Supreme Court Judges and High Court Judges ranked highly in the survey, ahead of police, university lecturers, accountants, ministers of religion and bank managers;
- 57.6 the survey has all the limitations of any survey – for example, a different result might have been obtained if people had been asked to rank with whom they would rather entrust a confidence, or money for safekeeping, or trust to represent them in a confrontation with their neighbour;
- 57.7 and such a survey question would be a much more realistic test of the public view of lawyers – people in serious trouble, or with a serious grievance, usually want to be helped by a lawyer;
- 57.8 I venture to suggest that no amount of extra pro bono work done for the community by lawyers, or no amount of PR by legal representatives, would significantly change the "middling" perception of lawyers as a profession in such surveys. More relevantly in the NLPR context, comprehensive changes to regulation of lawyers, and making regulation more national, would have even less effect. It may be reasonably confidently asserted that most of the respondents to the Roy Morgan survey would not be influenced or actuated by knowledge of or exposure to the system of legal profession regulation;
- 57.9 The Watergate example cited by Martin CJ in his CORO paper is a reflection of

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the prevalence of lawyers in high and important public offices, not necessarily of typical vices of the profession as a whole. Every large profession will have its bad apples. Similar comments could be made about his observations about the commissioner's findings in the HIH royal commission (and the commissioner's comments about lawyers were comparatively mild and were general in nature, as opposed to his comments about the auditors, who were named);

57.10 On the positive side, and despite all this, law remains a very popular course, and lawyers continue to run for and get voted into public offices. And on a more important level, no-one is really questioning the essential planks of the system of which lawyers are an essential component, namely the separation of powers, the rule of law and obedience to legislation and court orders.

58. All this does not mean that I do not disagree with the Attorney-General in his conclusion that "public opinion and experience is not helped in any way by the inherent inconsistencies in areas such as complaints-handling and discipline", nor that I do not think that the legal profession needs to keep up its efforts undertaking to improve itself and its reputation.

Conclusion

59. However, all of this does strongly reinforce to me that it is important in this process critically to analyse proposed reforms, not only against financial and consumer costs and benefits but also against the factor of whether the independence and strength of the legal profession and of legal professional bodies is significantly put at risk by the reform.

Yours sincerely

A handwritten signature in black ink that reads "Tony Abbott".

A N Abbott
Partner

Copy: Ms Kerin Leonard
Strategic Policy and Law Reform Branch
Australian Government Attorney-General's Department