REGULATION OF THE QUEENSLAND LEGAL PROFESSION: THE QUINQUENNIUM OF CHANGE

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I THE CHANGE AGENDA

Members of the legal profession are accustomed to change. They need to be. Whether it be the constant stream of statutory change, or the increasing number of cases decided by the courts (especially with its newfound electronic accessibility), there is little in legal practice that remains static. As a focus of this article is change, it heralds no new experience for the practising lawyer. But here the change relates to matters at the core of the lawyer's practice, because in 2007 Queensland saw the enactment of the *Legal Profession Act 2007* ('the 2007 Act') and the commencement of the *Legal Profession (Solicitors) Rule 2007* ('the 2007 Rule'). Various aspects of these documents were not new; indeed, in some respects the 2007 Act essentially replicated what had been law under a 2004 Act of the same name. Yet it also addressed important topics previously located in other legislation, which it had proven premature to include in its 2004 counterpart. The 2007 Rule represents a more marked shift, if perhaps more in form that in ultimate substance.

Together, in any case, these enactments represent what is arguably the most significant single regulatory impact on the Queensland legal profession, certainly in recent times. It is therefore apt to give some consideration each of them. In so doing, this article does not go through the Act and the Rule in meticulous detail. Instead, it makes various general observations regarding the role and effect of both the Act and the Rule, on occasion illustrated by the specific.

II LEGAL PROFESSION ACT 2007 — WHAT'S THE DEAL?

Five general observations regarding the Legal Profession Act 2007 may assist in placing the Act in a context, both from an historical and a policy perspective.

A *The National Model — Uniformity is Good!*

Attempts to creating a 'national legal profession' are not new. Yet it was not until relatively recent times that concrete endeavours to this end came to any real fruition. Although the Law Council of Australia had recognised the value of such an initiative back in 1994, the real impetus for the 2007 Act (and its 2004 predecessor, as well as recent Acts in most other Australian jurisdictions) was the resolution by the Standing Committee of Attorneys-General (SCAG) in 2001 to develop model laws. This prompted a lengthy consultation process, which in April 2004 resulted in the release by SCAG of Model Laws. In late July 2005 followed Model Regulations.

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In July 2006 SCAG released a second, revised and re-arranged, edition of the Model Laws (with altered section numbering), the general structure of which (but not the section numbering) forms the basis of the 2007 Act.

The intention was for the Model Laws to form the foundation for 'uniform' legislation regulating the legal profession in each Australian state and territory. Recognising the likely insurmountable challenges to each jurisdiction passing identical legislation, the Model Laws did not strive for identity between jurisdictions, but envisaged scope for diversity, and in some contexts considerable diversity. The Laws sought to do so by promulgating three types of provisions: 'core uniform' (CU) provisions, which require textual uniformity; 'core non-uniform' (CNU) provisions, which do not require textual uniformity; and 'non-core' (NC) provisions. The SCAG focus was to achieve uniformity in specific areas, which were thus punctuated with CU and CNU provisions. To a substantial, though not complete, degree, this initiative met with legislative success, generating considerable uniformity across Australia in the following areas:

- standards for admission to practice;
- a national practising certificate scheme;
- rules for trust accounts and fidelity funds;
- definitions of misconduct;
- the regulation of incorporated legal practices and multi-disciplinary partnerships;
- requirements for the disclosure of information on costs to clients; and
- the system governing the entitlements of foreign lawyers to practice the law of their home country within Australia.

Of course, even with substantial uniformity regarding the foregoing, this leaves not insignificant scope for regulatory variation between jurisdictions. Moreover, even in the areas where almost complete uniformity has been achieved (an example being the provisions regulating incorporated legal practices and multi-disciplinary partnerships), it is regrettable that not one Australian jurisdiction adopts the same section numbering as another. Even the structure of numbering varies between jurisdictions; Queensland and New South Wales, for instance, follow the usual consecutive numbering sequence (albeit with significant variations in actual numbering) whereas Victoria (and the second edition of the Model Laws) adopts a chapter-part-section numbering system with punctuation marks between each number. This lack of true uniformity has led the present Federal Government, via the auspices of the Council of Australian Governments (COAG), to take steps to draft uniform laws regulating the legal profession by the target date of May 2010.[1]

According to the Law Council of Australia's *Statement on National Practice*,[2] four aims drove the push towards substantial uniformity, namely to:

- encourage competition leading to greater choice and other benefits for consumers;
- enable integrated delivery of legal services on an Australia-wide basis that is commensurate with existing and future market demand for legal services;

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1 See Roger Wilkins, 'Agenda for Reform: National Regulation of the Legal Profession' (August 2009) 47 *Law Society Journal* 50.

2 Law Council of Australia, available at: <www.lawcouncil.asn.au>.

- streamline state and territory regulation to allow lawyers to practise 'seamlessly' within Australia; and
- enable Australian law firms to compete on a national and international basis and market themselves to international companies looking to invest in Australia.

To this end, the implementation of the Model Laws furnished an opportunity to include dedicated provisions directed at ensuring effective regulation of aspects of the profession that have truly national implications. The national practising certificate statutory scheme and the regulation of legal practice by foreign lawyers, coupled with the legitimisation of incorporated legal practices and multi-disciplinary partnerships, are the initiatives that best reflect these aims, and the substance of these were put in place by the 2004 Act. In line with the national focus, though, the 2007 Act (and its 2004 predecessor) uses the term 'Australian lawyer' to refer to a person who is admitted to practice in any Australian jurisdiction,[3] and 'Australian legal practitioner' to refer to an Australian lawyer who holds a current local or interstate practising certificate.[4] Also, many of its provisions are directed to a 'law practice', which is defined to mean an Australian legal practitioner who is a sole practitioner, a law firm, a multi-disciplinary partnership, or an incorporated legal practice.[5]

Apart from some reordering of subject matter, the main contributions made by the 2007 Act lie in the important areas of costs, trust accounts and professional discipline. These do not as readily dovetail into the above aims, although the costs and trust account sections do, in line with the Model Laws' aims, reveal considerable uniformity with those in other jurisdictions. Disciplinary procedures (as opposed to basic misconduct definitions), on the other hand, remain very much the domain of each jurisdiction.

The 2007 Act also represented an opportunity to prescribe a more cohesive structure for regulating legal practice than its predecessors, a point that carries especial weight in the Queensland context in view of its history of fragmenting legislation.[6] It also adopts the meritorious modern drafting practice of general outline provisions at the outset of each chapter. Time will tell, however, as to the success of the 'uniformity' achieved. To maintain a national focus, the amendment of 'core uniform' provisions in particular will need legislative action by all eight Australian Parliaments. Without this, the resultant cracks in the wall of uniformity may then threaten its impenetrability, and undermine the assurance of both lawyers and laypersons who rely on a consistency of approach across the nation.

Noteworthy as the steps towards national uniformity in the regulation of legal practice may be, they arguably represent only a relatively minor incursion into achieving the stated aims of securing 'other benefits for consumers' and enabling 'integrated delivery of legal services on an Australia-wide basis which is commensurate with existing and future market demand for legal services'. A more substantial incursion would be the product of uniformity of procedure rules. Although several jurisdictions, including Queensland, have in the recent past enacted uniform civil procedure rules, the consequent improvements in intra-jurisdiction uniformity have not been paralleled by improvements in inter-jurisdictional

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3 *Legal Profession Act 2007* (Qld) s 5(1) (previously *Legal Profession Act 2004* (Qld) s 5(1)).

4 *Legal Profession Act 2007* (Qld) s 6(1) (previously *Legal Profession Act 2004* (Qld) s 6(1)).

5 *Legal Profession Act 2007* (Qld) Sch 2 (previously *Legal Profession Act 2004* (Qld) Sch 5).

6 See below at II.B.

uniformity. To the contrary, rather; the shift away from the original model for Australian rules of procedure (the English Supreme Court Rules, now superseded) appears to have generated greater rather than lesser incongruity as between jurisdictions.

B *An End to Legislative Fragmentation*

The introduction of a new Act, and one that purports to cover the field in a specific area, almost always represents an opportunity to ensure a more cohesive structure than its predecessor(s), which more likely than not will have been the product of multiple amendments over time. Not unlike books in their umpteenth edition, statutes can through this process readily develop structural infelicities and unwieldy section numbering.

As foreshadowed above, in the context of regulating the Queensland legal profession, the benefit of a new piece of comprehensive legislation is greater again. The reason for this is that regulation of the profession was in the past governed by a varied combination of Acts and Rules. This was a unique practice, as from the earliest times other Australian jurisdictions enacted a dedicated single statute regulating the practise of law. In Queensland, though, at least three main Acts impacted directly on how the legal profession was regulated, the Queensland Law Society Act 1952, the Legal Practitioners Act 1995 and the Trust Accounts Act 1973. Substantive aspects of regulation were also found in the Queensland Law Society Rules 1987. More recent times saw the Legal Profession Act 2004 function in tandem with the above 1952 and 1973 Acts, as well as the 1987 Rules.

The 1995 Act was, in any case, a relocation of provisions from Acts enacted in 1867, 1891, 1921, 1938, 1965 and 1968, and as a result did not exhibit anything approaching a logical or cohesive structure. It instead addressed various largely unrelated topics, including the taxation of costs, costs agreements and admission to practice. The costs provisions were later moved to the Queensland Law Society Act 1952 as part of the Civil Justice Reform Act 1998, a location one would not logically expect to find the regulation of solicitors' costs to be addressed. The 1952 Act by this time also contained reasonably detailed professional disciplinary provisions, albeit all within sections 5 and 6 (specifically ss 5C–5P and ss 6–6AM, the numbering of which itself reveals something about the process of repeated amendment, as does the fact that the title to Part 2 of that Act — 'The Queensland Law Society Council to Manage Society' actually dealt chiefly with the making and investigation of complaints against lawyers). As mentioned earlier, it was not until the Legal Profession Act 2007 that costs, disciplinary proceedings and trust accounting came under the one Act. This also avoided the complexities that were the product of applying a general piece of legislation — the Trust Accounts Act 1973, which also applied to conveyancers and accountants[7] — to solicitors' trust accounts.

Consistent with the position in all other Australian jurisdictions, the regulation of legal practice is, as a result of 2007 Act, found in the one piece of legislation.

C *How Long? When Too Long is not Long Enough*

In the law brevity appears a lost art. Whereas once judges could make an important point in judgments of only a few pages, modern judges appear constrained to write page after page, not infrequently without improving the clarity of the points being made. An equivalent trend towards exhaustiveness ostensibly infects the

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[7] See definition of 'trustee' in *Trust Accounts Act 1973* (Qld) s 4. It now applies only to accountants.

parliamentary draftsperson. Especially in the case of statutes with a strong regulatory focus, brevity in modern legislative drafting is rarely seen; the trend is in the opposite direction.

Simple page number comparisons in the context of Queensland legal profession legislation illustrate the point. As of 1995, the Queensland Law Society Act 1952 and the Legal Practitioners Act 1995 were, respectively, 97 and 36 pages in length (without appendices and schedules), a total of less than 140 pages. When the 2004 Act was enacted, it measured 372 pages, and was to be read in tandem with 54 pages of the Queensland Law Society Act 1952 as it then stood, around 420 pages in total. The Legal Profession Act 2007, when enacted, totalled 527 pages! The growth in regulation appears almost exponential in nature.

Indeed, at the time when New South Wales enacted its Legal Profession Act 2004, the rumour, and one that has yet to be discounted, was that the Act was the longest single piece of legislation ever enacted by the New South Wales Parliament. The equivalent Act of the same year would also probably have taken that title in Victoria had it not been for the Gambling Regulation Act passed the year before, which *just* pipped the Legal Profession Act in overall length. That the Gambling Regulation Act, rather than a stand-alone new enactment, collapsed several Acts in the one large Act reinforces highlights the extensiveness of the regulation of legal practice. And this was in the context of an activity the general law frowns upon (it declares contracts for betting and gaming void as against public policy).

Of course, not many within the legal profession would welcome a comparison between gambling and the conduct of legal practice. Yet it is interesting to note that the Legal Profession Act 2007 represents a far lengthier regulatory exercise than that which applies to any other trade, occupation or endeavour. Even the Property Agents and Motor Dealers Act 2000 (Qld) — which regulates the conduct of business of not only real estate agents and motor dealers, but also pastoral houses, commercial agents, property developers, residential letting agents and auctioneers — is shorter by over 50 pages than the Legal Profession Act 2007. Nor is the regulation of financial advisers via the Corporations Act 2001 (Cth) as lengthy. As an aside, nor does *the general law* arguably regulate these endeavours to the same extent as it does the legal profession.

By itself, it is conceded, simply citing page length comparisons says relatively little. But to the extent that regulation of an activity or practice represents a judgment by parliaments (and judges) that, without this regulation, the public may or would not be adequately protected, the sheer detail of statutory regulation of legal practice could be worrying in what it may say about public trust in the profession. A cursory perusal of the content of the 2007 Act reveals that, almost without exception, it is designed to mould the conduct of lawyers to reflect the policy of adequately protecting consumers of legal services from potential abuses of position by lawyers. This functions at the level of entry to the profession, as it does in respect of discipline of lawyers, and to multiple aspects of what intervenes, including restrictions on the form of practice, the need for insurance and fidelity cover, detailed prescription for the integrity of trust money, and copious obligations when it comes to costs disclosure. The importance of these matters, respective parliaments have reasoned, dictates that they must be the subject of statutory restriction or compulsion. Allowing members of the profession to exercise their own (or sometimes even *any*) professional judgment in these areas is, it appears, to countenance too great a risk to the public good. Whether at an invididual or a collective level, what underscores the foregoing is a view that society cannot trust the profession to regulate itself.

D *Adieu Self-Regulation?*

The point made at the foot of the last paragraph is perhaps the most significant upshot of statutory initiatives directed at regulating the profession. It was once thought that a hallmark, and indeed one of the main hallmarks, of a profession was that its commitment to public service, coupled with its special skill or knowledge, justified the absence of state (and with it statutory) interference in its regulation. Roscoe Pound made the point in the 1950s that '[i]t cannot be insisted too strongly that the idea of a profession is inconsistent with performance of its function, exercise of its art, by or under the supervision of a government bureau'.[8] The following remarks by David Weisbrot, penned in 1989, reflect the way things were not that long ago:[9]

> The Australian legal professions have been very successful in resisting external (including State) intervention in reforming the structures and restrictive practices of legal work, in particular in warding off efforts to diminish the degree of self-regulation … This success is due to: the influence upon and penetration of the State by lawyers, who are found in large numbers in the parliaments and senior bureaucracy and hold a virtual monopoly over judicial appointments; … the ability of the legal profession to call upon the dominant rule-of-law ideology to argue for the 'independence' of the profession from even minimal State or external control; and the ability to invoke the traditions of English legal practice which have been received in Australia.

In 1989, Weisbrot could observe, the principal professional associations were self-regulatory, with powers over admission and discipline, continued rights of practice, the setting of ethical standards, and oversight with respect to trust accounts.[10]

Yet only a short time later, on the eve of 1996 Victorian legislation that imposed very significant changes to the regulation of the legal profession in that jurisdiction, the then Victorian Attorney-General remarked that '[a] system of pure self-regulation in an area as critical to the public as the provision of legal services is unacceptable'.[11] It certainly cannot be said today that the profession has complete power over admission and discipline, and the detailed statutory obligations imposed in respect of accounting for trust moneys and disclosing costs themselves can be seen to impinge on lawyers' freedom to regulate lawyer-client financial dealings. The profession does, however, retain considerable autonomy over the setting of ethical standards, although the push to national consistency in rules of professional conduct[12] may operate, at some level, as a de facto restriction on that autonomy.

In the modern statutory environment, sentiment against pure self-regulation translates in various ways, discussed below. This does not mean that statute and self-regulation are mutually inconsistent with one another. Scope exists for statute to strengthen self-regulation,[13] but this is the exception, not the rule.

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8 Roscoe Pound, *The Lawyer From Antiquity to Modern Times* (1953) 361.

9 David Weisbrot, *Australian Lawyers* (1989) 183.

10 Ibid, 193.

11 *Reforming the Legal Profession: An Agenda for Change* (Attorney-General, Victoria), cited in R Evans, 'Profession Faces Shake-up' (1994) 68 *Law Institute Journal* 568. See also Law Reform Commission of Victoria, *Access to the Law: Accountability of the Legal Profession*, Discussion Paper No 24, July 1991, paras 28–36.

12 See below at 3.1.

13 See, eg, *Legal Profession Act 2007* (Qld) Pt 7.6 (which gives statutory recognition to the Queensland Law Society Incorporated as a regulator of the legal profession).

1 *Admission to practice*

Beyond the more onerous duties imposed on individual lawyers by statute, the notion that the profession by itself determines its membership has since passed into history. The 2007 Act, like its 2004 predecessor, established a Legal Practitioners Admissions Board,[14] the membership of which includes a person nominated by the Minister. The Act, moreover, prescribes the Board's functions and powers, and makes provision for the appointment and eligibility of board members and the conduct of board meetings. In a sense, this represents not a great departure from the admission process prescribed under the Solicitors Admission Rules 1968 (Qld), although locating the process in an Act not only raises its profile, it also makes it the more accessible. Under the 2007 Act (as under the 2004 Act), the Board's role is to assist the ultimate admitting authority (the Supreme Court) by making a recommendation about each application for admission.[15] In making a recommendation, the Act requires the Board to consider, inter alia, the prescribed 'suitability matters' in relation to the applicant.[16]

The trend towards uniformity across Australia for admission processes and inquiries, in each case not under the control of a professional body, is likely to assist in ensuring greater consistency in determinations for admission to practice. This would be further aided were the suitability factors to address in more detail the factors identified by the courts as relevant to a finding of good fame and character.[17]

Be that as it may, there are strong grounds for maintaining that there should be a substantial commonality of approach in assessing eligibility for admission. Ideally, there should be no room for an observation such as that of Crawford J in *Law Society of Tasmania v Richardson*[18] that 'it is likely that the practice in this State does not fall within what the Full Court in *Re Del Castillo* (1998) 136 ACTR 1 at 7 referred to as "common throughout Australia for applicants for admission to legal practice to disclose quite minor charges"'. After all, impressions of widely varying treatment on admission depending on jurisdiction, apart from promoting forum shopping, are likely to be detrimental to the confidence the public can legitimately feel regarding ethical standards within the profession.

So it is hoped that the uniform approach to admission prescribed by legislation will avoid the disparate outcomes in, say, *Law Society of Tasmania v Richardson* and *Re AJG*.[19] In the former, an applicant who made a conscious decision *not to disclose* a finding of academic misconduct and displayed no remorse for that omission received no disciplinary condemnation, whereas in the latter an applicant who *disclosed* a not dissimilar finding of academic misconduct while expressing contrition was denied admission for a time. And the contrast between the Australian Capital Territory Full Court's inclination in *Re Del Castillo*[20] to deny admission to an applicant who did not disclose an acquittal for murder, against a background of lying to the police and his lawyer, and the New South Wales Court of Appeal's

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14 See, *Legal Profession Act 2007* (Qld) Pt 7.5 (previously *Legal Profession Act* 2004 (Qld) Pt 7.5).

15 See further, Reid Mortensen, 'Becoming a Lawyer: From Admission to Practice under the *Legal Profession Act 2004* (Qld)' (2004) 23 *University of Queensland Law Journal* 319.

16 *Legal Profession Act 2007* (Qld) s 39(2)(c).

17 See, Gino E Dal Pont, *Lawyers' Professional Responsibility*, (4th ed, 2010) 27–37.

18 [2003] TASSC 9 at [77].

19 [2004] QCA 88.

20 (1998) 136 ACTR 1.

disinclination to discipline the same applicant,[21] reveals an inconsistency that does the profession few favours.

Of course, removing from the profession any role in the admission process is going to guarantee consistency no more than retaining some role for the profession. And to assume that all judges will bring the same views to good fame and character is to vest judges with unwarranted homogeneity. But a common statutory framework in dealing with admission to practice across Australia is likely to be at least one step in the path to greater consistency.

2 *Professional discipline*

It has been traditional for professional bodies, such as law societies, to receive and investigate complaints against lawyers. The rationale for this was that law societies had a vested interest in ensuring the proper conduct of their members. Not all found this compelling, instead maintaining that the 'representative' role of law societies did not sit well with their 'disciplinary' function, it being likely that any tension would be resolved in favour of the lawyer. Responding to these concerns, it has been a common practice to prescribe a tribunal to hear complaints against lawyers as an intermediate step between the law society and the court. The extent to which such tribunals were independent of the profession, and law societies had the fortitude to pursue matters in the tribunal, varied from jurisdiction to jurisdiction, and from time to time. This was coupled with law societies' investigatory and prosecutorial resources being stretched to a level that in some instances rendered those functions almost nugatory.

Prior to the enactment of the Legal Profession Act 2004, complaints against solicitors were to be directed to the Law Society Council, which then had an investigatory role. A Tribunal composed of legal and lay members determined matters brought to it by the Council. So far as barristers were concerned, disciplinary issues were addressed under the Bar Association's Articles of Association. Aside from applying a common disciplinary regime to both solicitors and barristers, the 2004 Act transferred the complaints handling process to a person independent of the Law Society, namely the Legal Services Commissioner. The latter, who is appointed by Government and need not be a lawyer, may refer the complaint for investigation by the Law Society (or Bar Association), and give the Law Society (or Bar Association) directions as to its conduct and timing, but retains the power to conduct his or her own investigation. The 2007 Act retains these processes.[22] Complainants can, it is reasoned, enjoy greater confidence in the independence of the complaints handling and investigation process, assured that it is not one hijacked by lawyers wishing to protect their own.[23]

The other main contribution of the 2007 Act, and its 2004 predecessor, albeit not specifically directed to the issue of self-regulation, is the uniformity of definitions of 'unsatisfactory professional conduct' and 'professional misconduct' it

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[21] *Prothonotary v Del Castillo* [2001] NSWCA 75. The case is also notable for the following statement by Heydon JA (at [81]): 'Avoidance of lying is not a moral absolute. Lying can be wrong, but it is not always wrong. Bearing false witness against one's neighbour is forbidden, but not necessarily uttering untruths otherwise than as a witness which protect one's neighbour. If the opponent was trying to protect his wife, his culpability must be judged in the light of the fact that many people think that lying to protect one's family is in many circumstances not blameworthy.'

[22] See generally, *Legal Profession Act 2007* (Qld) Pts 4.4–4.8 (also previously *Legal Profession Act 2004* (Qld) Ch 3 Pts 2–5).

[23] See, Leslie C Levin, 'Buliding a Better Lawyer Discipline System: The Queensland Experience' (2006) 9 *Legal Ethics* 187.

heralds.[24] The previous statute defined only the concept of 'unprofessional conduct or practice',[25] leaving 'professional misconduct' to take its common law definition. The common definitions also target, and so clarify, specific behaviour that is considered unprofessional, such as the charging of excessive legal costs.[26] Consistency between jurisdictions as to conduct capable of generating a disciplinary consequence increases the likelihood of a consistent disciplinary response to equivalent forms of misconduct, and with it public confidence in the maintenance of consistent professional standards.

3 *Lawyer-client financial dealings — trust accounting and costs disclosure*

A frequent subject matter of complaint against lawyers pertains to costs,[27] specifically derived from a client perception that lawyers' services are too expensive. And professional discipline cases are littered with examples of lawyers who have engaged in trust accounting irregularities, from matters of mere oversight to the fraud that is part and parcel of deliberate defalcations. For this reason, amongst others, the Model Laws focused core uniform provisions on costs disclosure and trust accounting.

The issue of costs is squarely within regulators' radar. The move away from solicitor-client charging under a scale in favour of costs agreements has challenged regulators, while recognising the negotiated aspect of costs agreements and the importance of not interfering with the operation of the free market, to nonetheless ensure that clients are sufficiently empowered to negotiate at an informed level. The vehicle through which this empowerment has been achieved — beyond the already copious controls on costs imposed ex post facto, such as costs assessment, the setting aside of unfair or unreasonable costs agreements, and temporal restrictions on costs recovery — is costs disclosure.

In 1995 only New South Wales enshrined any costs disclosure obligation in legislation.[28] Costs disclosure obligations were prescribed in the Australian Capital Territory, Queensland, South Australia, Tasmania, Victoria and Western Australia, but in professional rules. In any case, these did not approach the breadth of costs disclosure obligations that, within little more than a decade, became *de rigueur* in legal profession legislation Australia-wide. Queensland is no exception in this regard, the standard Model Laws disclosure requirements now being found in the 2007 Act. The details of these requirements straddle ss 308 to 318 (and some 10 pages) and, aside from being more comprehensive than equivalent provisions in the 1952 Act, now clearly prescribe the consequences of failing to fulfil the disclosure requirements. The body of the 1952 Act addressed costs disclosure in the one brief section — s 48 — which was inaccurately titled 'usual client agreement' and did not prescribe the consequences of non-disclosure. The detail disclosure was left to a notice prescribed by the Schedule to the Act, which in turn did not approach the detailed disclosure requirements prescribed by the 2007 Act.

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24 See, *Legal Profession Act 2007* (Qld) ss 418 (meaning of 'unsatisfactory professional conduct'), 419 (meaning of 'professional misconduct') (previously *Legal Profession Act 2004* (Qld) ss 244, 245).

25 *Queensland Law Society Act 1952* (Qld) s 3B.

26 *Legal Profession Act 2007* (Qld) s 420(b) (previously *Legal Profession Act 2004* (Qld) s 246(b)).

27 See eg, Legal Services Commission, Annual Report 2007–2008, Appendix 4 (item 4.3) (costs matters formed almost one-quarter of inquiries of the Commission in 2007–2008).

28 See, Gino E Dal Pont, *Lawyers' Professional Responsibility in Australia and New Zealand*, (1996) 276–9.

Underscoring the broadened disclosure requirements is the notion that clients who are fully informed concerning the scope of their costs exposure are positioned to make decisions as to whether or not to retain the lawyer in question and also whether or not to proceed with litigation. They also empower the client to compare lawyer with lawyer via a price/fee comparison, and thus encourage lawyers to compete on price. (As an aside, this feeds into the inaccurate and unfortunate perception that not only are legal services not dissimilar to other services, but that the services of one lawyer are directly comparable to those of another). The potentially severe costs (and even disciplinary) consequences of non-disclosure are motivators (although in reality more like sticks than carrots) for lawyers to comply with disclosure requirements. To this end, a commentator has remarked that '[i]t is not what clients are being charged that matters so much these days as whether they know and agree to what they are being charged'.[29] Although this statement, taken at face value, is not entirely accurate, its substance highlights the client empowerment stemming from costs disclosure.

Just as the costs disclosure aspects of the lawyer-client relationship cannot, in the public interest, be left unregulated — leaving it to each lawyer's own practices, as was the case until not that long ago — lawyer-client financial dealings via moneys advanced on trust, whether for costs (to be incurred) or other purposes, are candidates for detailed regulation. Of course, the regulation of trust accounting by lawyers is by no means a recent feature of legal practice. Whether by statute or by regulation, for years now Australian lawyers have been required to meet detailed trust accounting requirements.[30] More frequently than is ideal, too, lawyers are subject to disciplinary sanction for failing to fulfil these requirements. Judges and disciplinary tribunals have on repeated occasions emphasised the importance of complying with trust accounting requirements, however minor, in terms of public confidence in the profession. In the words of King CJ in *Re a Practitioner*:[31]

> [The court] has a duty to vindicate the inviolability of the trust imposed upon a practitioner to treat his client's money in all respects as their money and to use their money for their purposes and no other. The public can feel confidence in legal practitioners and their handling of their money only if they know that there is involved no element of judgment on the part of the practitioner, and that their money must remain in his trust account until it is disbursed in accordance with their direction; because no matter how good the intentions of a practitioner might be, no matter how confident he might be that the money can be made good, whenever a client's money is deliberately used for a purpose other than the purpose for which the client entrusts it to the practitioner, there is an act of dishonesty on the part of the practitioner and one which exposes the client to some element of risk as to his money.

As mentioned earlier, in what represented an approach unique to Queensland, lawyers' trust accounts were, until the Legal Profession Act 2007, regulated principally under the Trust Accounts Act 1973 (and its attendant regulations).[32] This

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29 M Wilson, 'Keeping Fees Within the Bounds' (November 2007) 45 *Law Society Journal* 40.

30 See generally, Gino E Dal Pont, *Lawyers' Professional Responsibility* (4th ed, 2010) ch 9.

31 (1982) 30 SASR 27 at 31. See also at 32 per King CJ; *Re a Barrister and Solicitor* (1979) 40 FLR 44, 62 (FC(ACT)); *Re Nelson* (1991) 106 ACTR 1, 23 per Higgins and Foster JJ; *Re Maraj (a legal practitioner)* (1995) 15 WAR 12, 25 per Malcolm CJ; *Legal Practitioners Conduct Board v Boyes* (2001) 83 SASR 449, [22] per Prior ACJ, with whom Bleby and Gray JJ concurred.

32 Being the *Trust Account Regulations 1973* (Qld).

legislation, entirely separate to the statutes regulating the conduct of legal practice, applied to 'trustees' as defined, being solicitors, conveyancers and public accountants. The Act, according to its long title, was directed to making provision 'with respect to the keeping of certain books of account and records by trustees, the establishment and management of trust accounts by trustees, the examination and audit thereof, and for matters connected therewith'. Its generic application dictated the need for provisions specific to lawyers, both in the Act[33] and in the Queensland Law Society Act 1952.[34] Coupled with the fact that it had been amended on multiple occasions through the years, as a result the 1973 Act did not exhibit a readily cohesive order or structure. Its title also inaccurately suggested that its provisions applied to all trustees, whereas this was clearly not the case.

The Model Laws, and their push towards national uniformity, provided the impetus for lawyers' trust accounting obligations to be addressed specifically in dedicated legislation. The 2007 Act therefore saw the inclusion of Part 3.3 ('Trust money and trust accounts'), which follows the Model Laws' schema. Importantly, aside from its more cohesive structure, it introduces, within an expansive definition of 'trust money',[35] the concepts of 'controlled money' and 'transit money',[36] to which specific accounting requirements apply.[37] The 2007 Act also prescribes a dedicated procedure for investigation and external examination of lawyers' trust accounts.[38]

E *De-Professionalisation via Generic Regulation?*

The increasing level of statutory regulation over the conduct of legal practice can lead one to believe that its tenor is entirely specific to the legal profession. The remarks at the outset of this article can be construed as giving credence to this view, especially in that the legal profession is more highly regulated than other professions, occupations and endeavours. At the same time, it may be pondered whether, notwithstanding the extent of statutory regulation, much of it is not generic in some sense. Perusing the 2007 Act may lead one to inquire whether it could form a structural foundation for regulation of other than the legal profession. Were reference to 'Australian legal practitioner' replaced with a specific type of agent, or an accountant, or a financial adviser, with several notable exceptions, it may be that the regulatory framework would not necessarily alter that much.

The foregoing observation is made tentatively; agents, accountants and financial advisers are, after all, subject to existing (more limited) statutory regulation. But in view of a trend towards 'one size fits all' regulatory regimes — witness the generic provisions in the Corporations Act 2001 (Cth) regulating 'financial services licensees'[39] — could the modern 'uniform' approach to regulation of legal practice

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33 See, *Trust Accounts Act 1973* (Qld) ss 4D, 4F.

34 See, *Queensland Law Society Act 1952* (Qld) Pt 3 ('Supplementary Provisions Relating to Trust Accounts').

35 See, *Legal Profession Act 2007* (Qld) s 237(1), which does not, however, encompass money involved in financial services or investments (see s 238).

36 See, *Legal Profession Act 2007* (Qld) ss 251 ('controlled money', being 'money received or held by a law practice for which the practice has a written direction to deposit the money in an account, other than a general trust account, over which the practice has or will have exclusive control': s 237(1)), 253 ('transit money', being 'money received by a law practice subject to instructions to pay or deliver it to a third party': s 237(1)).

37 *Legal Profession Act 2007* (Qld) s 238.

38 See, *Legal Profession Act 2007* (Qld) Pt 3.3, Divs 3, 4.

39 See, *Corporations Act 2001* (Cth) Pts 7.6, 7.7, 7.9.

be another step towards what may be described as 'de-professionalisation' of the legal profession? Australia has already witnessed pressure on the scope of the legal profession's monopoly over the provision of legal services for reward. Increasing perception of a law degree as a generic qualification rather than a vehicle for legal practice may, moreover, feed into a broader perception that law, whether as a field of study or as a discipline, is far less unique than once assumed.

If this observation is an accurate one, there is likely to be a more significant role for ethical standards, in the main prescribed by professional rules, in promoting and maintaining the historical distinctiveness of the law and legal practice. It is the professional rules to which the article now turns.

III LEGAL PROFESSION (SOLICITORS) RULE 2007 — WHAT'S THE DEAL?

A *General Background*

The promulgation of 'codes of ethics', 'rules of conduct', 'principles of professional responsibility', and the like, by lawyers' professional bodies has been a phenomenon of relative recency in Australia. In 1986 it was observed that 'codes of professional ethics' had been adopted by law societies in Western Australia (in 1983) and South Australia (in 1984), and that the 1979 recommendation of the New South Wales Law Reform Commission that a code of ethics be prepared for lawyers in that State had yet to be acted upon.[40] In a submission to the Commission, the New South Wales Law Society did not see the need for a code because 'the standards of conduct expected of a solicitor are well known and understood by the members of the profession and basically by the public at large'.[41] Since then, with the exception of Tasmania,[42] rules of professional conduct have found their way into each Australian State and Territory.

Australia was a late starter in this regard. In 1908 the American Bar Association adopted its original Canons of Professional Ethics, which were in turn based on a code of ethics adopted by the Alabama Bar Association over 20 years earlier. The twentieth, and now the twenty-first, century has witnessed various subsequent iterations of such a document.

The impetus for 'uniform' rules of professional conduct was driven largely by the Law Council of Australia, which promulgated Draft 'Core' Rules of Professional Conduct and Practice in 1995. These exhibited substantial similarities with the New South Wales 1994 Professional Conduct and Practice Rules. Once the Law Council Rules lost their 'draft' status, the introduction to the rules made clear that they were 'intended as a set of model rules which each Constituent Body of the Law Council might agree to adopt with a view to ensuring greater uniformity in the regulation of legal practitioners throughout Australia'. The Rules anticipated, though, that they would be 'supplemented as necessary to meet the requirements of each Constituent Body'.

This main objective is well on the way to being achieved, as the Law Council Rules currently form the basis of the rules of professional conduct in each Australian

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40 J Disney, J Basten, P Redmond and S Ross, *Lawyers* (2nd ed, 1986) 81.

41 Cited in M Sexton and L W Maher, *The Legal Mystique: The Role of Lawyers in Australian Society* (1982) 169.

42 The closest equivalent in Tasmania are the *Rules of Practice* 1994 (Tas), in the form of delegated legislation, which are at best patchy in addressing issues of professional responsibility.

jurisdiction except South Australia, Tasmania and Western Australia, and moves are afoot to bring these jurisdictions 'into line'. As the Model Rules envisaged, although the substance of their content has been implemented in the main, there remain detail variations on specific matters between jurisdictions.

B *The Former Solicitors Handbook and the Path to the 2007 Rule*

The Legal Profession (Solicitors) Rule 2007 was not the first Queensland foray into rules of professional conduct for solicitors. For at least a decade and a half, the Queensland Law Society compiled and issued a Solicitors Handbook. The preface to its 1992 edition described the Handbook as a 'Guide to Professional Conduct' compiled from a number of sources, including the Queensland Law Society Rules 1987 and previous rulings of the Queensland Law Society Council. It added that the Council issued the Handbook 'to assist in expressing the form of conduct appropriate to the solicitors' branch of the legal profession in Queensland'. In its most recent edition, issued in 2003, the preceding objective was replaced with one phrased in terms of 'a best practice guide provided to assist in outlining appropriate conduct for solicitors in Queensland'. As a result, the Handbook did not presume to reflect more than a Queensland focus, and shared little commonality, at least so far as expression was concerned, with equivalent publications in other Australian jurisdictions.

Its nature as an amalgam of rulings by the Council supplemented by reference to delegated legislation (the Queensland Law Society Rules 1987) dictated that whatever cohesive structure it once had (even the 1992 edition reveals a mix of topics lacking links and logical order) was largely lost with amendments over the passage of time. In fairness, it seems unlikely that the Handbook was ever intended to be a statement of solicitors' professional responsibility in the cohesive sense of the Law Council's Model Rules, and indeed rules of professional conduct in most other Australian jurisdictions.

So far as the status of the Handbook was concerned, a court did not address the issue until 2003. In *Holland v Queensland Law Society Inc*[43] Helman J was asked to rule on the enforceability of coercive 'rulings' issued by the Council of the Queensland Law Society that had not taken the character of a rule or by-law (say, were not located in the Queensland Law Society Rules 1987). What led to the case was the issue by the Council of a ruling restricting the fees chargeable by a solicitor in 'no win, no fee' speculative personal injury claims.[44] His Honour ruled against the enforceability of coercive 'rulings' of this kind, and acceded to issuing declarations that 'there is no legal obligation upon solicitors to comply with the ruling' and 'the ruling has no legal effect'. In response, a caveat was placed at the outset of the 2003 edition of the Handbook that its status 'in general and with particular reference to the treatment of coercive rulings in it and the need to comprehensively review them, is currently under consideration'.

Even without being prompted by the decision in *Holland* — and in any case the ruling successfully challenged in *Holland* shortly thereafter took statutory effect in similar form,[45] which is now replicated in the 2007 Act[46] — the push towards 'uniformity' at a national level would nonetheless have, in time, consigned the Handbook to being of no more than historical significance. There is also no uncertainty as to the status of the 2007 Rule. The 2007 Act specifically empowers

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43 [2003] QSC 327.

44 The ruling was published as para 8.06 in the Solicitors Handbook, with intended effect from 22 August 2002.

45 See, *Queensland Law Society Act 1952* (Qld) Pt 4B Div 2A (ss 48IA–48IC).

46 See, *Legal Profession Act 2007* (Qld) Pt 3.4 Div 8 (ss 345–347).

the Law Society to 'make rules about legal practice in this jurisdiction engaged in by Australian legal practitioners as solicitors',[47] which rules, however, have no effect unless the Minister notifies the making of them.[48] The Act also makes clear that legal profession rules are binding on the lawyers to which they apply, and failure to comply with them may constitute unsatisfactory professional conduct or professional misconduct.[49]

C *The Handbook and the 2007 Rule Compared*

It is probably not profitable to make specific comments about the detail distinctions and differences between the Handbook and the 2007 Rule. Many stem from what was noted earlier, namely that the Handbook, unlike the 2007 Rule, represented more of a compilation of various rules and pronouncements than any attempt at a coherent statement of professional responsibility. To this end, the Handbook tended, generally speaking, to deal with the minutiae of legal practice more so than the 2007 Rule. For instance, it specifically addressed the use of broadcast and loudspeaker telephones, the taping of conversations, and the use of outside facsimile services, while the 2007 Rule adopts a more principle-based approach. Having said that, both address what can be described as the fundamental issues of professional responsibility, such as conflicts of interest, confidentiality and undertakings, as well as various other aspects of the lawyer-client relationship. What the 2007 Rule adds is a detailed treatment of the duties that lie on lawyers who conduct litigation and engage in advocacy on a clients' behalf.[50] If for no other reason than the functional division between barristers and solicitors, the Handbook's coverage of these issues was brief at best.

The foregoing reveals that the 2007 Rule reveals a shift, if not in ultimate substance, in general approach to the content and form of professional rules in Queensland. The Queensland Law Society has opted to implement the Law Council's Model Rules in both order and content, and then to supplement these with rules on specific practice topics (dealing with sharing receipts, conducting a branch office, sharing of premises, advertising, supervision and mortgage financing / managed investment schemes).[51] The 2007 Rule differs from its counterparts in other jurisdictions (and also the Law Council Model Rules), though, in providing guidelines and / or a commentary to some of the rules. These additional materials are intended by way of illustration and not as part of the rule. It is the plan to provide additional comments and guidelines on the Society's website over time, in order to assist lawyers and the public in applying 'the rules to practical situations and identifying areas of risk and best practice for avoiding possible breaches'.[52] This rule-commentary approach is less sophisticated than the rule-commentary approach adopted in the American Bar Association's Model Rules of Professional Conduct, or even the New Zealand Rules of Professional Conduct for Barristers and Solicitors, which carefully relate the commentary to each aspect of the relevant rule.

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47 *Legal Profession Act 2007* (Qld) s 219(1).
48 *Legal Profession Act 2007* (Qld) s 225(1).
49 *Legal Profession Act 2007* (Qld) s 227.
50 See, *Legal Profession (Solicitors) Rule 2007* (Qld) rr 12–20.
51 See, *Legal Profession (Solicitors) Rule 2007* (Qld) rr 33–38.
52 *Legal Profession (Solicitors) Rule 2007* (Qld), Introduction.

D *A Broader Question — What Function do Professional Rules Serve?*

Although Australian lawyers' professional bodies historically displayed a reticence in promulgating professional rules — as noted above, the promulgating of professional rules is a relatively recent phenomenon in Australia — rules of this kind can serve various roles, some immediate and others more abstract. These are discussed below.

1 *As a standard of conduct in disciplinary proceedings*

Professional rules express the profession's collective judgment as to the standards expected of its members.[53] As, in the words of an Australian judge, 'a reliable and important indicator of the accepted opinion of the members of the profession',[54] the rules assume direct relevance in determining whether disciplinary proceedings should be commenced against a lawyer, and in the hearing of those proceedings before the professional body or tribunal. They are also of considerable assistance in determining matters of misconduct *before a court*, although a court is not bound to apply them.[55] As explained by a Canadian judge:[56]

> The codes of professional conduct governing lawyers do not govern the court, which must follow the law … not rules of professional ethics. But that theoretical distinction weakens in practice, for the rationales for the law and the ethics are similar, as are the problems. So professional ethics codes are suggestive, even persuasive in court.

It may be open to a court, moreover, to resort to professional rules as an indicator of the requisite standard of care in tort,[57] and of the reasonable expectations of the parties in cases of alleged conflict of interest or breach of confidentiality.[58]

But these rules 'cannot supplant legal principles as set out in judicial decisions'[59] or provide a private cause of action against the lawyer.[60] Although neither the 2007 Rule, nor any other Australian professional rule, makes provision to this effect, the position is likely to be as expressed in the American Bar Association Model Rules, that '[v]iolation of a Rule should not itself give rise to a cause of action against a lawyer nor should it create any presumption in such a case that a legal duty has been breached'.[61]

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53 *Black v Taylor* [1993] 3 NZLR 403, 409 per Richardson J.

54 *Chamberlain v Australian Capital Territory Law Society* (1993) 118 ALR 54, 60 per Black CJ.

55 *Brown v Inland Revenue Commissioners* [1965] AC 244, 258 per Lord Reid; *MacDonald Estate v Martin* (1990) 77 DLR (4th) 249, 256–7 per Sopinka J; *Chamberlain v Australian Capital Territory Law Society* (1993) 118 ALR 54, 60 per Black CJ; *Re a Medical Practitioner* [1995] 2 Qd R 154, 164 per Dowsett J.

56 *Gainers Inc v Pocklington* (1995) 125 DLR (4th) 50, 53 per Côté JA.

57 *Swirski v Hachey* (1995) 132 DLR (4th) 122, 126 per Wilkinson J. See Note, 'The Evidentiary Use of Ethics Codes in Legal Malpractice: Erasing a Double Standard' (1996) 109 *Harvard Law Review* 1102.

58 *MacLean v Arklow Investments Ltd* [1998] 3 NZLR 680, 693 per Gault J.

59 *Skye Properties Ltd v Wu* (2003) 247 DLR (4th) 151, [43] per RA Blair RSJ.

60 *Maguire v Makaronis* (1996) 188 CLR 449, 465–6 per Brennan CJ, Gaudron, McHugh and Gummow JJ.

61 American Bar Association, Model Rules of Professional Conduct, Scope [20].

2 *As an Hortatory Tool*

Rules of professional responsibility serve to convey to lawyers the nature of their onerous responsibilities, and the standards of conduct expected of them, in relation to the client, the court and the community. In so doing, the rules have *inculcative* value; they serve to inculcate and reinforce in prospective and practising lawyers what are the tenets of professional responsibility. They are also a reminder that simply because other lawyers may behave unprofessionally is no licence to do likewise.

In the modern competitive business environment, it may be that professional rules, to the extent that they emphasise service ahead of self-interest, may potentially function to curb an unbridled business philosophy. 'Experience shows', suggested a former South Australian Chief Justice over a decade ago, 'that when ethical obligations are not supported by codes or regulations binding on all who engage in a particular occupation, competition tends to depress standards to the lowest common denominator'.[62] If this point has merit, it may well have greater force today.

3 *To Guide Action*

Guidance for lawyers on issues of professional responsibility, aiding them to answer questions or resolve dilemmas of that kind, may be derived from professional rules. In this context, the rules are of especial utility to younger and inexperienced lawyers. They may not provide a clear and perfect answer each time — after all, no set of rules purports to be exhaustive — but they may contain a framework within which a lawyer can resolve the matter. The rules also provide a convenient reference point on issues of professional responsibility, potentially alleviating the need on occasion for lawyers to review the increasingly copious case law on professional responsibility.

4 *As an aid to fraternity*

It may be that professional rules can create a fraternity in which members perceive a norm in dealing with one another. As the rules apply to all lawyers, members of the profession can act and order professional affairs on an assumption that others will act in a similar fashion.[63] For example, lawyers (and their clients) can reasonably expect strict compliance with personal undertakings, and that they will not be misled by other lawyers.

5 *As a vehicle for justification and security*

Professional rules can be used by lawyers to justify their actions as the professionally correct approach required in various situations. For example, if clients are indignant as to why 'their' lawyer will not represent them in a conflict of interest situation, the lawyer can use the rules as a tool for justification. This also provides an element of security, as compliance with rulings and pronouncements of a relevant professional body, even if erroneous, will likely provide a defence to a disciplinary charge.[64]

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[62] Chief Justice Len King, quoted in M Phelps, 'Who are these people?' *Australian Lawyer*, December 1995, 3.

[63] F Zacharias, 'Specificity in Professional Responsibility Codes: Theory, Practice, and the Paradigm of Prosecutorial Ethics' (1993) 69 *Notre Dame Law Review* 223, 231.

[64] *Brown v Inland Revenue Commissioners* [1965] AC 244, 258 per Lord Reid; *Law*

6 *As evidence of a commitment to integrity and public service*

From another perspective, professional rules can be viewed as a public relations document designed to convince the public of the seriousness with which lawyers view their professional responsibilities. In turn, the community is invited to place trust and confidence in the profession in the assurance that its members will reflect the standards of conduct espoused in the rules. Ultimately, it is arguably the standards the profession sets for itself, *not those imposed externally*, that justify the profession's claim to that trust and confidence. Rules of professional responsibility play an important role in prescribing these standards.

This in part rests on the professional rules being accessible, both in location and in expression, to the public. This was certainly not a characteristic of the Handbook. Even when placed on the Queensland Law Society's website, it was available only to members. Moreover, in what is likely to have no parallel, each edition was prefaced by a disclaimer that '[t]his text is not intended nor is it suitable for use by members of the public'. The need, not just the desirability, for public accountability prevailed against such a covert operation under the 2007 Act. It requires the Society to ensure that a current version of the rules is available, without charge, for public inspection either at its principal place of business or on its internet site.[65]

7 *As a vehicle to emphasise the distinctiveness of law as a discipline*

As suggested earlier,[66] there are aspects of both regulation and the legal environment more generally that have the capacity to downplay the uniqueness of the lawyer's role in society. At the same time it may seem that only the courts have been successful in maintaining the distinctiveness.[67] When statutory regulation tends from the specific to the generic, it is the content of professional rules that remains as a vehicle to redress any imbalance. A perusal of the 2007 Rule reveals that its content would not readily be applicable to the pursuit of other endeavours; in other words, the Rule prescribes standards of behaviour unique to lawyers. That a majority of these standards may be little more than a replication of lawyers' duty at general law does not undermine this point. If anything, it reinforces it, because it reveals that the law views the function of lawyers in society as incomparable to others, and has as a result imposed on lawyers various responsibilities that have no counterpart in other disciplines.

It is in this context that the trend towards national uniformity in professional rules may perform its most valuable function. Apparent variations in rule-based statements of professional responsibility between jurisdictions can potentially undermine a claim to uniqueness as a discipline or practice (and feed the perception that lawyers lack ethics). Instead it suggests that 'ethical' principle is variable according to the State or Territory in which one practises, and if this is so, it may well be legitimate for an outsider to conclude that there are no set parameters for the ethical conduct of legal practice. A lack of common understanding, to this end, is a prelude to a conclusion that law and legal practice lacks sufficient distinctiveness to justify anything approaching special regulatory treatment.

Society of New South Wales v Moulton [1981] 2 NSWLR 736, 756 per Hutley JA.

65 *Legal Profession Act 2007* (Qld) s 230.

66 See at II.E.

67 An example is found in the High Court's ruling in *D'Orta-Ekenaike v Victoria Legal Aid* (2005) 223 CLR 1.

IV CONCLUDING REMARKS

The regulation of the legal profession has, as appears from the foregoing discussion, assumed considerable political significance. And it should not be assumed that every step towards increasing the level of regulation is necessarily a retrograde one. There are benefits to adopting a national perspective, with its attendant uniformity, although there may be other, more intangible, benefits than those touted when the Model Laws were first drafted. As noted immediately above, regulation and consistency at a national level may indeed give the profession a needed arsenal against attacks on its uniqueness.

But putting national professional standards 'on the map', as it were, may serve an even more important function when the environment — or, perhaps more accurately, the nature of the society — in which the 2007 Act and Rule, and the Queensland legal profession, is to operate is considered. It may be queried, at the outset, whether it is realistic to assume that the legal profession is immune to the 'affluenza'[68] that infects much of modern society. The 'business' of law arguably reflects not only competition policy in its application to the legal profession, but may be just as much a reflection of the society in which legal services are provided. The global financial crisis is unlikely to alleviate the pressures in this context. Moreover, the legal profession of today exhibits heterogeneity unknown to previous generations, and its members as a result bring to the practice of law a much wider base of personal experience. And at a university level, there is the award of more law degrees, to persons with a greater spread of academic ability, than ever before. The university environment is now also one punctuated by the empowerment of the student, where student responsibility is often reduced and law school obligation usually correspondingly increased.

It is perhaps no surprise that the modern 'business' environment in which the legal profession functions, coupled with both greater diversity within its ranks and a pool of new entries with potentially different values and expectations, the issue of consistent professional standards should assume increased importance. The profession of today is not identical to its forebear, and the same can be confidently predicted regarding the profession of tomorrow. Yet changes in composition, and indeed even of the attitudes that this may bring to the profession, need not undermine its traditional values, at least not if the profession is sufficiently proactive in fostering consistent national practice and professional standards. National uniform professional rules, in particular, have the capacity to assume especial significance, in emphasising to members of the profession and to the public it serves the non-negotiable aspects of professional responsibility.

In times of change — this article commenced by reference to a 'change agenda' — the constancy of professional standards can assume real value, especially if coupled with a broader level of uniformity in those standards.

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[68] See C Hamilton and R Denniss, *Affluenza: When Too Much is Never Enough* (2005).