ANSWERING NATIONAL LEGAL PROFESSION REFORM TASKFORCE QUESTIONS

This is my third submission responding to the Council of Australian Government's (COAG) National Legal Profession Reform Taskforce Consultation Report (2010). It answers Taskforce questions on professional indemnity insurance, fidelity fund cover, continuing professional development requirements, and disclosure and charging of legal costs, in the international, national and regional development contexts discussed later and in the light of previous submissions which are addressed again briefly below and attached. The appropriate management of all trust money and accounts is naturally also considered in related national and regional contexts. There seems no need for another Ombudsman.

The main recommendation resulting from consideration of my three submissions is that government ideally should pursue COAG aims by treating all dispute resolution as nationally funded services and abolish lawyers' practicing certificates.

In the above context, this third submission primarily discusses better coordinated approaches to all industry and community risk and fund management to reduce legal cost. It also shows that more supportive, protective, rehabilitative, fairer and competitive management and investment outcomes should generally be expected through individual, organizational, industry and community choice of management, saving and investment directions which operate consistently with definitions and investment directions found in the Superannuation Industry (Supervision) (SIS 1993) Act. Consultative consideration of proposals of the review into Australia's superannuation system (2010) is recommended in this context. National policy and taxation directions to support greenhouse gas reduction and sustainable development, and the proposed resource super profits tax (RSPT) are now ideally discussed in related regional industry and community contexts.

The National Legal Profession Reform proposals will not achieve the goals of COAG and will only help lawyers' enrich themselves while further confusing the rest of us.

According to the ACIL Tasman Cost Benefit Analysis of Proposed Reform to National Legal Profession Regulation, *the National Legal Profession Reform proposals are designed to:*

- *Reflect a simpler approach to regulation that minimises the compliance burden on law firms by focusing on requirements to be achieved, rather than prescribing the way in which they should be achieved*
- *Promote international competitiveness, and*
- *Facilitate pro bono work and access to justice* (p.5)

My first submission pointed out that the key goal in the draft Legal Profession National Law Objectives is: (a) *providing and promoting national uniformity in the law applying to the Australian legal profession'*. This would **not** achieve the first COAG objective outlined above because a prescription for national uniformity **is** '*prescribing the way requirements should be achieved*'. This is exactly what COAG states it is trying to avoid.

The concept of standards relates to specified qualities of production, service provision, choice and life, which ideally apply to all Australians and which are based on the United Nations (UN) Declaration of Human Rights, implemented by the Covenant on Economic, Social and Cultural Rights, the Covenant on Civil and Political Rights and related instruments such as the Rio Declaration on Environment. An administrative design to support and enhance *national standards* (**not** *national uniformity*) is required by COAG, to promote fair competition on a 'national level playing field' where government tries to ensure national minimum standards and economic, social and environmental protection and enhancement aims are met or improved upon fairly and cost-effectively, in partnership with industry and related communities. Public, private or non-profit service providers should have equal treatment unless something else seems in the public interest.

Clear goals and definitions which people use consistently to define and compare practice and evaluate the outcomes are crucial for research and administration. The draft Legal Profession National Law rarely uses definitions as distinct from interpretations, so its search for uniformity is not just wrong, it still predates the 18th century Enlightenment and the common dictionary definitions which are vital for scientific and democratic classification and practice. Good outcomes, rather than uniform practice are primarily what matters for good practice, whether these outcomes are expected to be guaranteed (as in bridge building safety) or can only be desired (as in improved mental health).

Therefore, in regard to the second COAG objective outlined above, wrongly mandated uniformity of service provision may prevent effective competition to improve outcomes in any area, including in the application of law and related practice. In addition, the draft Legal Profession National Law and related directions cannot promote international competitiveness because there is no way to achieve or measure the key Objective of the Law, which is *to establish an efficient and effective Australian legal profession*. This goal is only achieved by treating all dispute resolution consistently as service to evaluate its related products and outcomes. This recommended direction is discussed later. It will be better than more pro bono work because it will not encourage the feudal tradition of 'noblesse oblige' where a few in the community are expected to be grateful for being given gifts at the expense of others who are increasingly prevented from action, confused, kept in the dark, slowed up, financially exploited and tricked by those controlling them.

As pointed out in my first submission in regard to the objectives above, when the public speak of 'access to justice' they usually proceed from the conception of the legal system as a service provider, addressing their particular grievance, vindicating their rights and achieving their desired outcomes. However, the Attorney General's Department (2003) states that access to justice can only ever mean relatively equitable access to the legal process. The common dictionary also reflects this legally driven confusion between the modern ideal concept of justice as fairness, and its earlier, feudally driven administrative reality in courts, when it defines '***justice***' as: *Quality of being just; fairness; judicial proceedings; judge; magistrate.*

Courts and lawyers thus appear still to be treated as the scientifically and financially unaccountable embodiment of God's feudal Justice. As shown in earlier submissions, this occurs partly because the Constitution appears to stand for a Supra-natural Power, which takes a pre-scientific approach to all development. How else can the supreme authority of Its word over all other law made by the contemporary community or future generations be explained? This is an authoritarian rather than scientific or democratic approach. History suggests each generation is more informed than the last and ideally should correct past mistakes in the light of new experience. This is not possible under the Constitution, which keeps Australia looking backwards and elevates courts and their pre-scientific drivel.

The argument presented in my three submissions is that the legal reform direction suggested in them will achieve COAG objectives far better than those recommendations made by the Taskforce and entrenched in the draft Legal Profession National Law and the draft Legal Profession National Rules. This is clearly demonstrable from the logic of the argument I present. However, if lawyers object for any reason, this argument could also be tested as a hypothesis. Just do not keep on asking lawyers to answer questions and then blindly applying their answers to the population as if the feudal rubbish that comes out of their mouths without proper evidence is the truth they utter to meet out interests. Access to lawyers and courts is more like the opposite of justice than identical to it. The global financial crisis has also demonstrated that their commercial in confidence and other financial prescriptions bring us closer to perfect ignorance than perfect information.

The ideal design and direction of the National Legal Services Board and all related regional services including the work of courts and lawyers would be industry and community driven.

As indicated in my last submission, the National Legal Services Board, its supporting work and all related dispute resolution are ideally approached as services to achieve the aims of COAG, which the draft Legal Profession National Law claimed to do but did not. COAG aims are to achieve national standards for social (health) and environment protection fairly and cost-effectively. The Board is ideally designed as a statutory authority, because it ideally seeks social and environmental as well as economic goals. It is ideally made up of representatives from the key roles of the Australian people which it seeks to serve objectively and independently through COAG. The key stakeholders are ***employers, workers, consumers, investors and regional community members***. Lawyers are ideally treated in this context like the rest of us, not as being on a mission from God. (I see God mainly as a DJ but this is just a personal revelation. However, I digress.)

Service oversight or related management and recommendation by the Board are ideally undertaken on the understanding that all dispute resolution, including that pursued in courts and tribunals, is ideally treated equally as service. This should occur through application of the Australian and New Zealand Standard Industrial Classification (ANZSIC) system categories. One assumes most lawyers and other complaint and dispute related practitioners work in ***community service, government administration, property and business services or finance and insurance***. This direction is designed to make courts and lawyers' work accountable enough for comparative evaluation in regard

to meeting COAG aims and those aims in logically related law, such as the NSW Environmental Planning and Assessment Act (1979) and later legislation which broadly seeks to identify and appropriately balance economic, social and environmental outcomes before action is taken. The practice is also necessary for accountable and cost-effective fund management which also appears ideally to follow definitions in the Superannuation Industry (Supervision) Act 1993, discussed in relation to Taskforce questions later.
.
The Australian Services Roundtable described 'services' to a Productivity Commission (PC) inquiry in the following terms:

> Services deliver help, utility or care, an experience, information or other intellectual content. The majority of the value of that activity is intangible rather than residing in any physical product (2006, p.5).

Lawyers may find themselves employed in any ANZSIC category. However, the service categories outlined earlier appear most broadly relevant to this discussion. While the value of services may often be intangible, legal and related work value may most usefully be established by the design and cost of written products and outcomes of case treatment. It is naturally expected that treatment outcomes may be harder to identify effectively, and so to evaluate. On the other hand, the written case work product, the outcomes of its application and related evaluations are what one hopes for if trying to design services which aim to apply more scientific, democratic and empathetic case management approaches rather than feudal, adversarial and secretive perspectives on life's passage and any breaches and disputes arising on it. Industry and community profiles are ideally got by consideration of treatment and outcomes arising from identified problems and cases.

The Taskforce proposed the creation of a National Legal Services Ombudsman. However, the argument in my submission suggests an Ombudsman ideally operates in an industry context, not just for a single occupational group - lawyers. The National Legal Profession Reform Project Regulation Impact Statement (RIS) discusses a 'No Ombudsman' option and states this function could be left with existing State and Territory bodies. The RIS claims '*this would mean there would be no oversight mechanism to promote ongoing national uniformity and significant benefits to consumers in consistency and oversight would not eventuate'* (p.31). It has been shown that support for COAG national standards rather than national legal uniformity is needed and that nobody can identify or be made accountable for any benefits or losses which may occur as a result of the Taskforce proposals anyway. On the other hand, the NSW Ombudsman complained in a recent article in the Sydney Morning Herald entitled 'Labor shuts off access to secrets' that although the NSW Ombudsman holds royal commission powers of investigation it is the only ombudsman refused access to documents supposedly covered by legal professional privilege. There are many other issues of unequal treatment which ideally are treated in the public interest as distinct from in the interests of lawyers and related feudal, sectional powers. The Taskforce proposals ideally will allow this to occur.

The Taskforce claims ACIL Tasman estimates 1700 government lawyers that do not currently hold *a practicing certificate* (sic.) will need to have one under the draft Law (p.

3). One assumes this is an understated guess and that the price of certificates is also passed on to taxpayers and consumers. The monopoly practice of law is conducted according to costly, confusing, feudal and authoritarian principles rather than scientific and democratic ones, as shown in my previous submissions. Practicing certificates are highly undesirable and appear mainly to be the result of lawyers seeking further restraint of trade to enhance their most powerful sectional interests against the interests of all Australians other than their mates. The price of practicing certificates pays for legal aid, legal education and other matters that are best borne by those outside a legal profession which continues to pursue its ancient, unaccountable monopoly to produce rubbish for which the rest of the community must pay. The abolition of practicing certificates is first recommended in order to pursue the national funding directions discussed later below.

See the attached paper entitled 'Towards better management for mental health in Australia' for related information on regional direction. It argues that a wider range of remedies for improving mental wellbeing and crime prevention should be tried in related regional contexts, and their comparative outcomes evaluated. A related response to the Digital Dividend Green Paper (2010) is also attached which argues the digital dividend spectrum should be used to allow expansion or enhancement of existing broadcasting services and that it should contain:

- The curriculum content for key skills development and related education;
- Critical supporting information for communities to contribute to, understand, debate, manage and evaluate the outcomes of Australian government and related local, regional and international industry and community goals and directions;
- Other Australian cultural content which is critically designed for use at home and for export, in line with UN conventions and related international standards and directions where appropriate, which other nations besides Australia may or may not have adopted.

Ideally Australians should understand and apply the aims of law widely and sensibly in related national and regional contexts, which may often vary. If all court, legal and related dispute resolution performance is not treated as service to such communities, then one wonders how else it can be treated from government or community perspectives which seek to measure court and legal capacities. Time taken to complete cases is hardly enough. Any service funded by government or any related communities can be designed so its capacity to achieve goals can be measured, albeit subjectively in some instances.

Reforming courts and lawyers by treating their product as comparative service provision to meet COAG goals is now a far more reasonable and cost-effective response to the global financial crisis than the traditional 20th century responses to economic downturn. These mainly encouraged feudal, unaccountable and controlling legal and financial assumptions and practices to return to providing more of the traditional jobs for men in war and related production. This traditional route also led back to murdering millions again, including more Jews and any other minorities traditionally deemed socially and environmentally unconstructive by any men who could acquire the arms to kill them or others in the way.

NSW government still appears to revere the secretive, feudal, expensive and risky legal and financial interests which wrongly uphold competition on price as the only legitimate form. For example see the attached complaint to the Probity Adviser on the sale of the WSN Environmental Solutions waste management business by the NSW government, about documents prepared by UBS Investment Bank and Gilbert and Tobin for Treasury. These are so misleading, repetitively demanding and uninformative that one assumes few expressions of interest in WSN purchase will be received. They also ignore the most relevant legislation for the sale which appears to be the Waste Avoidance and Resources Recovery Act. The first object of this is '*to encourage the most efficient use of resources and to reduce environmental harm in accordance with the principles of ecologically sustainable development'*. The objects of this act ideally reflect the goals against which the potential purchasers of WSN are competitively judged. To read some of the very uninformative recent newspaper articles which should be about energy generation and distribution policy in NSW is also infuriating. (God I hate this Boys' Own journalism.)

Such refusal to address competition properly undermines achievement of all UN, COAG and regional goals which are social and environmental as well as economic. As the global financial crisis has clearly shown, market price may merely reflect the vested interests of many ignorant or lying financial controllers who may pass the inevitably increasing risks of its collapse to the rest of us, while the price and project originators depart to start again. Throughout the centuries the court pendulum may swing but the lawyers always win.

Reforming courts and lawyers is the only way to achieve more transparent, more scientific and cost-effective industry and community management to meet COAG and related community goals such as those expressed by Sharan Burrow, President of the Australian Council of Trade Unions (ACTU) and Peter Andersen, Chief Executive of the Australian Chamber of Commerce and Industry (ACCI), in their slightly outdated article in the Australian Financial Review (AFR, 17.6.08, p.71). They said:

> With the signing of the Kyoto Protocol by the Rudd Government, we now need to commit to a comprehensive multilateral agreement beyond Kyoto that includes industrialised and developing economies……We need to influence the design of Australia's emissions trading scheme that the Rudd government proposes from 2010. This includes measures to address affordability and social justice issues, especially for low paid or fixed-income people and families……..We need to work out how to provide the proper support for the carbon-intensive industries, to minimise impacts on jobs and economic activity. This does not mean get-out-of-jail-free cards for industries but sensible measures in the permit system as well as funds to aid cleaner production. And above all we need to invest in innovation and development of technology that makes us operate businesses and work in a more sustainable way. This includes sharing the knowledge in our region, for this is a global challenge.

One assumes the Prime Minister (PM) was attempting to follow the above direction at the unsuccessful Copenhagen conference which tried and failed to gain an international approach to carbon emissions trading. Marr claimed in a 'Quarterly Essay' article that

the angry PM said 'Those Chinese fuckers are trying to rat-fuck us' (2010, p.1). Chinese government representatives were later reported as saying they thought the claim was mistaken as the PM was unlikely to have said that. Perhaps the Chinese are too polite to say they don't support the feudal assumptions and relations the Kyoto Protocol and its supporting implementation of a carbon trading scheme appears to represent. One assumes Chinese government leadership has changed a lot since Mao was making their direction clearer. On the other hand, one now appreciates Chou En Lai's statement that it is too early to judge the outcome of the French Revolution much more than when he uttered it. Since WW2, the ideal feudal conception of the US state as defender of the faith which breaks up all monopolies but the lawyers' has done comparatively little to achieve wellbeing and democracy and much to retard it. Hooray for Hollywood, however. (Ave Maria, Gee it's good to see ya, doing the Vatican Rag, etc. etc. etc.)

The financial direction recommended in later answers to Taskforce questions is consistent with that of Joseph Stiglitz (2010) in his book 'Freefall: America, free markets and the sinking of the world economy'. He points out that there has been so much success in labour saving production in much of the world that there is also a problem of persistent unemployment and low demand, which is then dealt with poorly through increasing personal or government debt. A new global vision requires a new economic model involving sustainability. This ideally puts less emphasis on generating individual demand for material goods by those who are already over consuming and requires a shift in the collective direction of investment towards saving natural resources and protecting the environment – the factors of production and quality of life the market undervalues. The US view of risk management, described by Stiglitz, depends on spreading financial risk, rather than managing a pool of funds effectively to achieve injury prevention or rehabilitation goals related to environmental, social and economic risks which result from production or environments. The US treatment of risk simply multiplies risks and costs instead of reducing them and also promotes economic instability and all its attendant ills.

Australian study of workers compensation, Medicare, professional indemnity and related insurances have repeatedly shown that industries should not give away the ownership of their insurance or related funds when they can reap the benefits of fund investment themselves, as well as overseeing more stable, more effectively data driven and more competitive administration of injury, rehabilitation, investment and lump sum or pension management systems by fund managers approved to do so. Just as there is no good reason for premium holders to give away the premium pool for other underwriters to reap the benefit of its investment, there is no good reason for a legal system which takes adversarial rather than more scientific and democratic approaches to problems. There are many difficulties in ending injury claiming systems which depend upon the slow, uncertain, difficult and costly 'proof' of fault. Courts deliver large lump sums which may also be hard and costly for the injured to manage. The result for society of the above financial and legal combinations is more unfair cost. Taskforce questions are addressed in this context.

Q. Is the proposal to include a requirement that fidelity fund determinations be made at 'arms length from the profession' appropriate? In particular, are there

any practical impediments to imposing this requirement, especially in small jurisdictions?

The draft Legal Profession National Law does not define a fidelity fund but states that the objective of Part 4.5 Fidelity cover is ***'to establish a fidelity cover scheme to ensure that clients of law practices have a source of compensation for defaults by law practices arising from or constituted by acts or omissions of associates of law practices'*** (p. 88).

Lawyers' professional associations should not manage fidelity funds or make determinations because they pursue the interests of the legal brethren with whom they identify, rather than the interests of an aggrieved client. More accountable fund management, as distinct from arm's length fund management is also necessary. Any body giving its funds to another management body established at arm's length from itself, which may operate in secret, can only make itself more ignorant than it would otherwise have been. This is particularly so if the arm's length body has powerful hidden drivers and incentives of its own.

Lawyers often assume that objective management in the client or public interest is gained by enforced ignorance of any related conduct in what they deem ideally to be separate and closed off arenas. From broader scientific and cultural perspectives, any choice of ignorance about vitally related matters is mainly just seen as stupid. However, such structures are beloved in feudal cultures so many legal and financial hands may stroke each other more thoroughly in secret, while also ensuring the ignorance of all. This has been clearly indicated in the aftermath of the global financial crisis. Lawyers and their financial mates invariably take us towards perfect ignorance, not perfect information. Fidelity fund management and dispute resolution need to be considered in the relevant industry and community contexts discussed above and below.

Q. The Taskforce has aimed to ensure that existing jurisdictional professional indemnity insurance schemes are not interrupted by the introduction of the National Law, and that the existing requirements under those schemes are unchanged. Do the provisions in Part 4.4 achieve those aims?

Before posing the above question the Taskforce ideally should convince the reader that professional indemnity insurance schemes should continue to be managed in their existing jurisdictions as doing so seems the worst possible approach to any national reform. Consideration of the draft Legal Profession National Law also seems the best time to try to establish effective national dispute resolution funding and investment structures, rather than to support structures which are likely to become even more dysfunctional and costly. However, the *status quo* is being entrenched through the definition of ***jurisdiction*** as ***a State of Territory***, in Part 1.2.1 Interpretation of the Law.

Thus the combination of the Taskforce aim for professional indemnity insurance and the draft National Law take us backwards by reifying state and territory financial set-ups in law, rather than moving to more nationally effective and competitive ones, based on good modern legislation such as the Superannuation Industry (Supervision) Act. As financial

legislation the SIS act appears clear and logical in its savings and investment aims and assumptions, and also provides many clear and vital definitions that can make all related financial management more scientific and accountable to those it is meant to serve, instead of giving the normal money managers *carte blanche* with other peoples' money.

The functions of the fidelity fund appear similar to those in Part 4.4 on Professional indemnity insurance in that the objectives of this insurance are ***'to ensure that clients of law practices have adequate protection, by way of appropriate compensation, against the consequences of professional negligence; and to ensure that all practitioners have an adequate minimum level of professional indemnity insurance cover regardless of the jurisdiction in which a practitioner engages in legal practice*** (p. 85).

A related set of funds for consideration are dealt with in Part 4.2 Trust money and trust accounts. Trust money ***'means money received by the law practice on account of legal costs in advance of providing the service'***. It includes controlled money and transit money. The former is money received or held by the law practice in respect of a written direction to deposit it in an account over which the law practice has or will have exclusive control. Transit money means money received by a law practice subject to instructions to pay or deliver it to a third party, other than an associate of the law practice.

The functions of the fidelity fund and professional indemnity insurance are similar in that they are expected to guard service consumers against loss through the fault of a lawyer or related person. The management of lawyers' fidelity funds and professional indemnity insurance funds are ideally undertaken together in a related ANZIC industry and/or community trust context which also promotes effective data gathering and accountability in regard to all aspects of trust fund management. Others' funds can only be effectively managed when clear aims and definitions assist the administration process. Economies of scale normally allow large funds to be managed more cheaply than many small ones.

The National Legal Profession Reform Project Consultation Regulation Impact Statement (RIS) states trust accounting is a particularly complex area of law and even subtle differences between jurisdictions' requirements create a need for different compliance systems for each jurisdiction, creating further inefficiencies (p. 7). Management of specified funds ideally achieves the aims the fund is accumulated to achieve. However, adoption of definitions and fund administrative practices that are consistent with the SIS Act, wherever this appears logical, would probably achieve more transparent fund and risk management practices to achieve all fund aims and contain costs across all boards.

The SIS Act states its object is 'to make provision for the prudent management of certain superannuation funds, approved deposit funds and pooled superannuation trusts and have their supervision by the Australian Prudential Regulation Authority (APRA), the Australian Superannuation and Investment Commission (ASIC) and the Commissioner for Taxation. The basis for supervision is stated as being 'that those funds and trusts are subject to regulation under the Commonwealth's powers with respect to corporations or pensions (eg. because the trustee is a corporation). The object also states that in return

the supervised funds and trusts may become eligible for concessional tax treatment and that the Act does not regulate others entitled to engage in the superannuation industry.

Under the SIS Act a registrable superannuation identity means:

(a) a regulated superannuation fund or
(b) an approved deposit fund or
(c) a pooled superannuation trust but does not include a self managed superannuation fund, Constitutional corporations or other bodies

In order to obtain a registrable superannuation entity (RSE) licence, the trustee, or group of individual trustees must have a risk management strategy. This may enable them to be part of any public offer entity, as well as being able to access other incentives attached.

The Taskforce points out that ACIL Tasman claims the proposal to allow multi-jurisdictional law firms 'to have single general trust account' (sic.) in one of the jurisdictions in which they practice will save those practices $11.6 million per annum (p. 3). According to a paper produced for the review of Australia's superannuation system, a global pension fund analysis showed that the following are 'the five key levers' that affect the administration costs of running a super fund (in order of impact) (p. 24):

1. Economies of scale (including the size of the average member account balance)
2. Transaction volumes
3. Cost environment (i.e. relative labour costs)
4. Complexity of the product; and
5. Service levels offered to members

National industry funds which are administered regionally would be more cost-effective and may be coordinated effectively with industry superannuation funds management to achieve greater accountability and cost saving through reduced fees and charges. Although superannuation funds ideally assist personal saving for old age and related industry, community and personal investment and development, insurance against many calamities may be attached, most commonly in the case of personal disability or death.

Non profit industry superannuation funds have been shown to perform better than the competition, with fewer fees and charges. In this encouraging context the general management direction recommended in the Preliminary Report 'MySuper: Optimising Australian superannuation' by the review into Australia's superannuation system (2010) also deserves consideration by clients, employers, workers, government and other communities involved in or affected by dispute resolution and related work.

The MySuper design seeks to make superannuation saving and investment more transparent and comparable for the benefit of members, but does not necessarily separate it from other aspects of the trustee's operations (for example, other investment options) (p. 3). Decision-making rests with the trustee. Insurance coverage for dispute resolution work may reasonably include risk of any negligence charges or insurance for disability, death or other matters where fault is not the major issue. In MySuper, death insurance is suggested on an opt-out basis (p. 11). This is surprising to me, as disability insurance

seems more important than death insurance from the perception of any person or community which must support the disabled, especially in care in retirement homes. (In Australia the death of people is usually cheaper than their long term disablement).

In general, the security and accountability of the management of any fund superficially appears likely to be much improved by defining its key aims and related data gathering in relationship to the SIS Act and related national and regional directions and by opening fund performance up to more comparative and public scrutiny. All industry seems likely to be best protected from systemic risk arising from a loss of confidence in the security of savings if better related and more competitive approaches to risk management are taken in line with key SIS Act requirements and to achieve national and regional aims better.

Will the continuing professional development (CPD) requirements instituted under the National Law and the National rules adequately address the needs of Australian legal practitioners in all jurisdictions?

Ask not whether the National Law and the National rules adequately address the needs of Australian legal practitioners but whether they adequately address the needs of Australians. Lawyers should not assume they represent our interests when they represent their own. If this was not the case lawyers would have long ago taken more scientific and democratic approaches to all development and communication. They cling to feudal practice as it suits their interest in pursuing their monopoly control of power and money. To the extent that continuing professional development of lawyers is pursued, the rest of us will be kept in the dark so we can keep being ripped off by lawyers and their mates. Educate regional communities about how to act instead. See the attached and related response to the Digital Dividend Green Paper (2010) which was referred to earlier.

To the extent that courts operate according to feudal as distinct from typically scientific practices which came historically later, they appear to be happy to walk in the steps of a God who is also feudally inclined. The nature and language of feudal institutions naturally reflects past feudal business and is often headed and managed reverently by brotherhoods of lawyers who naturally like to operate secretly, with each client. They are the most clearly identified wise men of the particular tribe, although their behaviour is not logically based on any scientific or democratic expectations, but on the adversarial advocacy and related determination of the ideal meaning of words according to law. Any continuing professional development is likely to make this problem much worse. Encourage lawyers to attack and leave their practices. They are living in bad faith.

A key difference between feudal and scientific modes of thought is that in the former the concept of trust ideally depends upon ignorance, whereas in the latter it ideally depends upon evidence. The law often privileges secrecy over information, unless the latter is obtained with difficulty in court. This usually occurs only after calamities have already occurred. For the scientist or the ordinary intelligent person, the gathering of evidence is ideally seen as a disinterested pursuit, which is as widely informed as possible. This is in contrast with the earlier legal model of evidence which is introduced by adversarial lawyers and methods which legitimate the secretive pursuit of the interests of opposing

clients. Whilst doctors or engineers usually hate to put aside their common sense in case their clients or community members die, the lawyer is invariably willing to park his common sense to show his prowess in the legal game required. Over centuries, lawyers have accommodated themselves to the reigning social forces so effectively as to have now become an enduring and powerful monopoly which largely suits itself within modern capitalist economies. Any continuing professional development is likely to make this problem much worse. Encourage lawyers to attack and leave their practices instead.

Such people make us unconfident and lacking in the trust to build our search for knowledge upon our more obvious common sense and experience, as we think we do not have their approved 'knowledge' or certificates. If we have their approved qualifications or certificates, these often encourage us to be blinkered, self-serving, self-censoring, operationally complex, passive and petty receivers in order to please our 'betters'. Scientific and democratic approaches must break out of earlier feudal moulds. The rule of law has often served to manipulate or stop it, to serve earlier feudal interests. We still face Galileo's problems so need better education than lawyers are capable of giving.

Do the Taskforce's proposals in relation to the disclosure and charging of legal costs raise any particular concerns?

The Taskforce states '*What will constitute 'fair and reasonable' costs will require consideration of a variety of factors* (***see section 4.3.4***) (sic.), *such as the proportionality of the legal costs to the nature, importance and value of the matter, the skill and expertise of the lawyers concerned, and whether the costs were reasonably incurred'* (p. 18).

There is no section 4.3.4 in the draft Legal Profession Law or the Legal Profession National Rules! One assumes this means lawyers can do whatever they like, as usual. At least one does not have to deal with the concept of 'proportionality'. As I understand it, this essentially relates to how much one should bash one's opponent in a fair fight.

This continuing approach to the market is pre-scientific and anti-democratic as it does not recognize the power that the feudal men who keep the purse or wield the law have over others. The paradigms of financial operation, related law and much economics are based on the assumption of equal trading where exchanges naturally appear fair or they would not have happened. In this market paradigm, the more traders there are and the more they trade, the better off we are all supposed to be as a result of the increasing choice we have. Yet each trader's financial operations may be his closely guarded secret, protected by his recognized law and related peer practice. He may spend the purse of others on himself.

The term 'feudal' is a historical description of a pre-capitalist mode of production which was primarily based on conquest and exploitation of land and its people rather than on the increasingly evolving transformation of raw materials for sale as complex products and related services. Capitalist production, which followed feudalism, is ideally based on the primary appreciation of science and its increasingly productive capacities, as a result of the application of an increasing supply of new technologies which are also increasingly adapted to broadening markets. These may also support many more niche producers. In

Australian capitalist trading relations, banking, insurance, taxation, social insurance, superannuation, sovereign and other investment funds are ideally financial drivers which also offer protection for production and the people. The protective funding approach ideally includes support for injury prevention and rehabilitation strategies. Feudal, secretive, legal and financial expectations constantly drive better production back.

The productivity of capitalism also produced a clear conceptual distinction between the trading classes of capital and labour. The concept of consumers as a class of traders, as distinct from the class who deploy their capital or who sell their capacity to work, developed later still. Finally, attention has now also shifted to concern about the effects of production on the natural environment. Although some economists, such as many in the PC, use modern, historical, institutional, and culturally based economic analyses rather than more traditional economic and related legal assumptions, others continue to protect and enhance the older professional views, while telling us this is best for all of us. Feudal legal and financial men still rule us. If forced to deal with them, treat them like you would a plumber or an electrician. Get quotes so you can compare them better. Try to avoid them ever being in a position to tell you rubbish and keep you in the dark so they can do deals with their mates which depend upon your frightened acquiescence.

Thank you for the opportunity to make this submission. See related discussion attached. Yours truly, Carol O'Donnell, St James Court, 10/11 Rosebank St., Glebe, Sydney 2037.

.