

Crime in the Professions

Edited by
RUSSELL G. SMITH

ASHGATE

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Until his appointment on 6 November 1995 as a Member of the Australian Competition and Consumer Commission, Mr Bhojani was (from 1992 to 1995) a barrister with a general commercial and civil litigation practice at the independent bar in Western Australia. In 1994 he was appointed an Associate Commissioner of the Trade Practices Commission and has also been Deputy Chairman of the Law Council of Australia, Business Law Section's Trade Practices Committee.

From 1986 to 1992 he was a barrister and solicitor with the Commonwealth Attorney-General's Department, Perth office, and also with the Trade Practices Unit of the Australian Government Solicitor/Federal Court and Tribunals Registry.

In June 1991, and subsequently in June 1994, Mr Bhojani completed the Negotiation Workshop and the Advanced Negotiation Workshop respectively at the Program of Instruction for Lawyers at Harvard Law School, Harvard University.

He holds a Bachelor of Science (Monash) and Bachelor of Laws (Monash). In 1986 he was admitted as barrister and solicitor in Victoria and Western Australia. He has also tutored in trade practices law at the University of Western Australia.

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Sophie Curzon Blencowe is a Research Fellow at the Key Centre for Ethics, Law, Justice and Governance at Griffith University, in Queensland. She holds the degrees of BA (Hons) and LLB (Hons) from the University of Melbourne and received the 1992 Jessie Mary Vasey Prize for her honours thesis in women's history. She was also awarded the Dwight's Prize for the Final

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Ms Anne-Louise Carlton

Anne-Louise Carlton has worked for State Departments of Health and Community Services in both New South Wales and Victoria since 1978. Her qualifications include undergraduate degrees in Arts (majoring in Psychology and Law) and Social Work, from Sydney University, an MBA from Monash University and, more recently, a Bachelor of Science (Clinical Studies) from Victoria University. Her work in the public service has included almost 20 years in the Intellectual Disability field, both in line management and policy, where she was actively involved in closing institutions such as Caloola, and in managing the state-wide establishment of community-based programs.

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Carla Day is currently completing doctoral studies on compliance and decision-making in complex organisations at the Australian National University. She was previously Director of the Fraud Control Policy and Ethics Directorate within the Inspector General Division of the Australian Defence Organisation. Her role there was to manage a Defence-wide awareness program in ethical resource management, conduct research, and develop and implement fraud control policy within the Defence organisation. She is a registered psychologist who is a trained facilitator and has a broad background in health administration, management, counselling, and social and educational research.

Mr Andrew Dix

Andrew Dix graduated with a combined Arts/Law degree from the University of Sydney in 1977. After a period in private legal practice, he became involved in the field of medical law in the early 1980s as the in-house lawyer for the New South Wales branch of the Australian Medical Association. Following

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The Honourable Justice Kenneth Hayne

The Honourable Justice Kenneth Hayne is a Justice of the High Court of Australia, having been appointed on 22 September 1997. At the time of his appointment he was a judge of the Court of Appeal of Victoria, having been appointed one of the foundation judges of that court in June 1995. He graduated in Arts and Law from the University of Melbourne and, having been elected Rhodes Scholar for Victoria in 1969, graduated in 1971 as a Bachelor of Civil Law from the University of Oxford. He was admitted to the Victorian Bar in 1971 and appointed Queen's Counsel in 1984 practising in State and Federal Courts principally in commercial, constitutional and general civil matters. He was appointed a Judge of the Supreme Court of Victoria in 1992.

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Julie McMillan is a Research Fellow at the Australian Council for Educational Research. Prior to this she held research positions at the Australian National University and the University of Queensland. She has been involved in the Professions in Australia study for a number of years, examining issues such as the nature and characteristics of the professions, determinants of status and earnings within the Australian legal profession, and the recruitment and retention of medical practitioners to rural areas. Her current work, based upon the Longitudinal Surveys of Australian Youth project, focuses on the

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Toni Makkai is Director of Research at the Australian Institute of Criminology and program director of the Drug Use Monitoring in Australia (DUMA) project. Prior to this she has held university teaching and research appointments in England and Australia. Her research interests include drugs and crime, regulation and compliance and the professions. Her most recent publications have included 'Harm Reduction in Australia: Politics, Policy and Public Opinion' in Inciardi, J. and Harrison, L. (eds), *Harm Reduction: National and International Perspectives*, Sage Publications, Thousand Oaks, and 'Drug Trends and Policies' in Chappell, D. and Wilson, P. (eds), *Crime and the Criminal Justice System in Australia: 2000 and Beyond*, Butterworths, Sydney.

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Leanne Raven is Chief Executive Officer at the Nurses Board of Victoria in Melbourne, Australia. For the last 12 years she has worked with three nurse regulatory authorities in two states in Australia. With an undergraduate degree in science, a postgraduate diploma in education and a masters degree of nursing studies, she is currently working with a team of researchers in the field of gerontic acute nursing care. She is the Deputy Chair of the Australian Nursing Council and sits on the Nurse Practitioner Implementation Advisory Committee and the Victorian Secondary Schools Nursing Program Advisory Committee for the government in Victoria. In 1996 she was instrumental in the establishment of the Asia-Pacific Regional Regulatory Forum which now has met on three occasions. At the last meeting held in Bangkok there were

150 delegates from 21 countries. The next meeting is to be held in Hong Kong in November 2002. Leanne is a fellow of the Australian College of Nurse Management and the Australian Institute of Company Directors.

Professor Charles Sampford

After gaining a double first in politics and philosophy and the Supreme Court Prize in Law from the University of Melbourne, Charles Sampford won a Commonwealth Scholarship to Oxford to pursue his studies in law, being awarded a DPhil in 1984. He returned to the University of Melbourne to teach law before being seconded to the Philosophy Department in 1990 to help establish the Centre for Philosophy and Public Issues where he became Acting Director then Deputy Director and Principal Research Fellow, leading several projects including one on 'Law, Ethics and Business'. Griffith University's research committee invited him to apply for the Foundation Deanship and in March 1991 he set about the task of establishing what is widely regarded as the most innovative and most successful of the new law schools with Professor Sampford's curriculum receiving particularly high praise (including Sir Ninian Stephen referring to it as the 'second revolution' in Australian legal education).

While Dean he founded the National Institute for Law, Ethics and Public Affairs (NILEPA), an elite research unit which he later directed. In 1999, NILEPA joined two other centres to form the Key Centre for Ethics, Law, Justice and Governance, of which he is Foundation Director.

Foreign fellowships include the Visiting Senior Research Fellow at St John's College Oxford (1997) and a Fulbright Senior Fellowship to Harvard University (2000).

Professor Sampford has written over 60 articles and chapters in Australian and foreign journals and collections ranging through law, legal education and applied ethics and has completed 16 books and edited collections. He has also won over seven million dollars in grants, consultancies and awards for research work he has led. At the same time he has pursued a successful career as a part-time company director, gaining insights into the operation of Australian and international business that are valuable in work as an applied ethicist.

Professor Sampford has been consulted by business, government and three Queensland Parliamentary committees—the Parliamentary Electoral and Administrative Reform Committee, the Ethics and Privileges Committee and he is the advisor to the Scrutiny of Legislation Committee. In the UK he has

advised the Nolan Committee on Standards in Public Life and the Lord Chancellor's Committee on Legal Education and Professional Conduct. His advice was followed and his contribution has been publicly acknowledged by Lord Nolan. This approach has now been adopted by the OECD. In September 1998, he went to Indonesia on a special mission for the World Bank to advise the Indonesian government on governance reforms to deal with corruption.

Dr Russell G. Smith

Russell G. Smith has qualifications in law, psychology and criminology from the University of Melbourne and a PhD from the Faculty of Laws, King's College, University of London. He is admitted as a Barrister and Solicitor of the Supreme Court of Victoria and a Solicitor of the Supreme Court of England and Wales. Dr Smith practised as a solicitor in Melbourne for a number of years before becoming a lecturer in Criminology at the University of Melbourne in 1990. He then took up a position at the Australian Institute of Criminology in 1996 where he is now Deputy Director of Research. He has written widely on aspects of computer crime, fraud control and professional regulation. His books include *Medical Discipline* (Clarendon Press, Oxford, 1994), *Crime in the Digital Age* (Federation Press, Sydney, 1998, written jointly with Dr Peter Grabosky), *Health Care, Crime and Regulatory Control* (Hawkins Press, Sydney, 1998), *In Pursuit of Nursing Excellence* (Oxford University Press, Melbourne, 1999) and *Electronic Theft: Crimes of Acquisition in Cyberspace* (Cambridge University Press, Cambridge, 2001, written jointly with Dr Peter Grabosky and Dr Gillian Dempsey).

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He has 30 years experience of basic and applied social research with an emphasis on the professions and work, class and social stratification, urban and regional development, the criminal justice system, social impact assessment and program evaluation. He has worked in south-east Asia and China as well as in Australia. In Asia, his work has been supported by UNDP, IDP, the World Bank and AIDAB and in Australia by the Australian Research Council, the Criminology Research Council and a variety of government agencies.

Mr Andrew Williams

Andrew Williams has long-term experience with a number of specialist insurance broking firms, particularly in relation to the effect of litigation on professions and occupations. Mr Williams has been directly involved with the creation and administration of affinity programs for professional and occupational liability insurance for the commercial, legal and medical professions.

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Ms Beth Wilson

Beth is the Health Services Commissioner (health ombudsman) in Victoria, Australia. The Commissioner receives and resolves complaints from consumers of health services about health service providers with a view to improving the quality of health services for all. Prior to becoming the Commissioner, Beth was the President of the Mental Health Review Board. She is a lawyer by training, specialising in medico/legal issues, and has an interest in law, medicine and ethics.

Foreword

On Monday 21 February 2000, the Australian Institute of Criminology's conference 'Crime in the Professions' was opened by the then Minister for Justice and Customs of the Commonwealth of Australia, Senator the Honourable Amanda Vanstone. The following is the text of Senator Vanstone's address.

In the last population census conducted by the Australian Bureau of Statistics in 1996, there were 1.3 million professionals and 861,000 associate professionals identified. All of the professions have a vital role to play in Australia's economic and social development. The ability of professionals to apply knowledge to real world problems, and their ability to change as conditions change, will make them the source of much of our future wealth. If the ethical standards expected of the professions are maintained, their contribution will be all the more valuable.

In recent times, the professions have been changing. New occupations have sought and achieved professional standing; new technologies are altering what professionals do. Professional work has lost some of its mystique. For example, we can all find out a lot more about our diseases on the Internet, we do not need to rely on doctors for information; and transnational and multidisciplinary professional practices are starting to emerge.

Along with these changes are new opportunities for professionals to act illegally or unethically. In this book, representatives from a number of professional organisations will speak about the nature of professional crime which is taking place at present, and how this will change in the future. The increasing complexity of our financial arrangements means we rely more and more on lawyers and accountants. This provides them with new opportunities to appropriate clients' funds other than in the best interest of the client. For example, one smaller client being advised to invest in a project being developed by a larger client. It need not be a risky project but the question should be is it the best for the smaller client or just acceptable with the side effect of making the bigger client happy.

Doctors are more entrepreneurial. They are more available than ever, but entrepreneurial medicine also creates the opportunity to act unethically for financial gain—for example to over-service.

The public service is less process- and rule-driven. That means that it is more flexible, but creates the opportunity for unethical conduct.

It is not just offences against criminal law which should concern us. In 1989 I raised the issue of drugs in the workplace. Anyone who has suffered the misfortune of a hangover will understand how debilitating it can be. Do lawyers after a boozy lunch settle for less on your behalf than they should? Does an accountant neglect an extra tax deduction you could claim? No one wants a hung-over or drug-affected doctor examining their critical blood tests.

The importance of professionals' jobs, and our reliance on them, means that they have just as great an obligation as a train driver or airline pilot to turn up for work ready to do their best for their clients. Needless to say, recent media reports of the use of cocaine in the legal profession are extremely concerning in this context, and because society rightly or wrongly expects highly paid experts to set an example.

Although members of the public now have a much greater willingness and ability to challenge the power of professionals, there remain problems in providing effective ways in which allegations of impropriety may be identified, reported and investigated. It is clear that we need new enforcement approaches to professional crime.

This book will also consider how crime within the professions can best be dealt with. The problems are significant. The use by professionals of new technologies, for example, has created particular problems for police and regulatory agencies in investigating cases of fraud and dishonesty, as the traditional trails of evidence can be disguised and manipulated with ease. In the future, as technology makes cross-border professional activity a reality, it may become necessary to reconsider the traditional geographical boundaries which govern the regulation of professional activities. Not only national, but also international regulatory measures will be needed as professionals, both new and old, explore the possibilities which the convergence of computing and communications technologies has brought.

The Commonwealth is acutely aware of the importance of the new criminal opportunities that are developing as a result of globalisation and advances in information and communications technology. Fraud is the major criminal offence committed against the Commonwealth. It is a crime that responds quickly to new opportunities. We are updating our fraud control policy, and we have recently introduced a Bill consolidating and updating the Commonwealth's theft and fraud offences.

However, developments to address crime in the professions will need to build on what is good about the professions. You will also be reading about the important role which professional education in ethics can have in preventing illegal and improper behaviour. Although self-regulation through the use of codes of practice can have an anti-competitive aspect, prevention of misconduct is far preferable to dealing with the problem once it has arisen. As a lawyer I am acutely aware of rivalries between the professions. In this book, we can see how professionals can put aside their rivalries to work on professional crime. The continuing role of professions in our society depends on it.

**Senator The Hon Amanda Vanstone
(Minister for Justice and Customs, Australia,
from October 1998 to January 2001)**

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PART I

BACKGROUND