

# Modern Professional Practice and its Future

3 March 2016

Presentation Slides

# Acknowledgment

The researchers wish to acknowledge the funding and support for the research from the following organisations and research partners:



**Australian Government**

**Australian Research Council**

**This research was supported under Australian Research Council's Linkage Projects funding scheme (project number LP140100219).**



The Professional Standards Councils has generously provided research funding, the time and expertise of its personnel and venue for research workshops.

**Allens > < Linklaters**

Allens has generously provided the time and expertise of its personnel and venue for research workshops.



Corrs Chambers Westgarth has generously provided the time and expertise of its personnel.

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The following universities and organisations have provided researchers or are associated with the project:



We are grateful for the support of each and all of these contributors, without their generosity this research would never have been published.

# About the conference

This conference explores the future of professional practice in the 21st century. This includes professional practice in large firms, the tension between high remuneration and professional ethics, globalisation and professional norms, models of regulation and most transformative of all, digitisation of professional services.

The conference showcases the research of a team combining academics from leading Australian and overseas universities and professionals from the Professional Standards Council. The researchers have taken topics central to the understanding of modern professional practice and combined academic research with a strong practical emphasis. This is seen in the combined presentations of researchers and practicing professionals invited to comment on the research presented. Where possible the presenters identify practical recommendations on the topic of discussion. A range of professional settings from law through accounting and finance to the built environment and occupations involving technology are considered.

The conference is for professional associations, practicing professionals and aspiring professionals who wish to be ready for the changes that the scale of practice, globalisation and the exponential growth of digital systems is already bringing to the professions.

# Conference program

Inventing the Future: Professions and Digitally Enabled Work	Author and presenter: Richard Susskind	n/a
Professional indemnity insurance: compensating consumers and regulating professionals?	Authors: John Morgan and Pamela Hanrahan	Slides 6 – 17
What is the Point of a National Exam? University Training and Life-long Learning in the Professions	Authors: Charles Sampford and Hugh Breakey	Slides 18 – 29
Mapping differences in professional models and professional practice across the globe	Authors: Alex Roberts and John Chellew	Slides 30 – 36
The Promise of Professionalism in the 21st Century	Authors: Justine Rogers, Dimity Kingsford Smith, Thomas Clarke and John Chellew	Slides 37 – 44

# **Professional indemnity insurance: compensating consumers and regulating professionals?**

Authors: John Morgan and Pamela Hanrahan

# Introduction

- PI insurance a hallmark of established professions
  - Mirrors expansion of liability
  - Requirements to hold PI
    - Statute
    - Membership of professional body
    - Professional standards schemes
  - Also voluntary – top up
- Our paper
  - Framework
  - Lawyers' and Accountants' PI
  - Conclusions

# Framework

- Changes incentives – but how is the conundrum
- Insurers private risk regulators when they take steps to reduce **their** risk
- Moral hazard – strategies (regulation) to reduce it
  - Price
  - Deductibles and co-payments
  - Exclusions, cancellation and non-renewal
  - Information feedback – risk management
  - Insurer as gatekeeper



# Framework

- What do we mean by regulation and how is it formed
  - Private v public interest
    - Davis v Silver debate
  - Self interested insurer operating subject to market forces and desire to sell affordable product
  - Public interest of compensation and reputation of profession
- But public interest through PII may only be achieved with co-operation with insurers – within the framework they offer
- Other players and interests
  - Insured
  - User of advice

# Framework

- Risk Transfer
  - Complexity in understanding the residual risk left behind – the skin in the game
  - Disadvantage of the individual professional to assess its risk v the pooled risk of the insurer and detailed loss information
  - Evidence of poor understanding of risk
- The distinctive nature of PI
  - A difficult risk –
    - Primarily reactive risk (v fixed)
    - Complex loss with a long tail
  - Boundaries of cover
  - Claims made
- An overall complexity leading to uncertainty

# Framework

- Compensation objective – impact of external forces and attitude of insurer
  - Recoverable loss
    - Legal liability
    - Bushfire/flood effect
  - Claims handling
    - The insurer reasserts its interest (with the insured)
    - Delivery of compensation depends on insured triggering policy, actual legal liability for the loss and capacity of victim to pursue claim against a skilled litigator (it is their business!)

# Framework

- Liability insurance as protective scheme
- A spectrum models from highly regulated schemes to no external regulation
  - Think of a motor scheme at one end
    - Compulsion to hold and issue cover
    - Control on recovery
    - Control on procedure
    - Fall back protections
  - Voluntary acquisition of liability insurance at the other
- Where do our PI arrangements fit on this spectrum; why some but not all of the external controls? What is the policy objective?
- How high is the compensation objective?

# Lawyers' and Accountants' PI

- Sources of the obligation to hold PI
  - Statute
  - Professional body
  - Professional Standards Scheme
- Limits
- Policy Features
  - Prescribed v Open market
  - Limits and deductibles

# Lawyers' and Accountants' PI

- Identity of Insurer
  - Insurance regulatory framework
  - Owned or alongside professional body
  - Contract (facility)
  - Open market
- Compulsion, adverse selection and price
  - Compulsion to insure and adverse selection
  - Indirect compulsion to issue policy

# Lawyers' and Accountants' PI

- Attributes of insurance cover
  - The insured
  - Premium
  - Deductible
  - Interactions – deductible, limits and claim definition
  - Limits
  - Retro date
  - Run-off
  - insolvency

# Risk management and the feedback loop

- The involvement of professional bodies and closely aligned insurers leads to increased feedback
- Example of LawCover
  - Reflections back into premium and positive supervision of poor risks
- Reporting template of PSC



# Conclusions

- PI regulatory function in conjunction with professional bodies, aligned insurers and PSC
- Compensation is there but does not necessarily cover the field
- Problems of lack of uniformity of cover particularly where professional left to negotiate in open market
- Issues for users of advice
- A need for more work on the policy settings and how they are best achieved
- Need for better education of what PI actually does

# **What is the Point of a National Exam? University Training and Life-long Learning in the Professions**

Authors: Charles Sampford and Hugh Breakey

# Overview

- Three approaches to selecting a national exam.
- Employing the national exam to test competence.
- Exams and education in established professions.
- Employing the national exam to test ethics.
- Understanding integrity systems: Potential risks.

# Three approaches to selecting an exam

- What's the role of the exam in terms of the larger effort to improve standards? There are three distinct approaches:
  1. Exam as Panacea: the exam stands as the core bulwark in the battle against low standards of service.
  2. Exam in the Checklist: The exam takes its place as a staple 'building block' to guarantee standards.
  3. Exam as potential integrity-system component: The exam strategically designed to fill specific roles, augmenting and complementing other mechanisms.

# Using the exam to increase standards

- There can be two distinct explanations for the low standards plaguing a service-sector:
  - Low standards of competence/expertise.
  - Low standards of ethical compliance levels.
    - These inter-relate: virtues of diligence and professionalism require expertise and ethics.
    - But they remain distinct: fixing competency may fail to improve standards if ethical compliance remains low.
- We need to be clear about which problems the exam is expected to solve (and how), and whether it impacts on solutions to the remaining problems.

# Different exam functions

- The exam might be employed as a:
  - Check that educational organisations are performing;
  - Method of standardising required knowledge;
  - Alternative (non-university) pathway to accreditation;
  - Guarantee of minimum standards across all parts of a service sector (including para-professionals);
  - Stop-gap transitional measure on the road to developing formal education requirements;
  - Gateway to full professional status;
  - Assurance of knowledge of relevant codes and regulations.
- These functions can each require different sorts of exams.

# Ensuring competence

- Can a national exam ensure the same standards of competence as university assessments?
  - For a host of reasons, Universities employ multi-faceted, iterated grading procedures to test students.
  - University degrees can teach myriad practical skills and proficiencies that even sophisticated exams can struggle to test.
  - Diverse and multi-layered assessment limits integrity risks (a single exam constitutes just one barrier against deliberate cheating).

# Education in the professions

- Professions began using exams widely in the 19th Century. Even then, they were supported by apprentice-style learning and lectures—and later, by formal university qualifications.
- Professional education involves a life-long learning process in which the university elements are merely the most intensive:
  - Continual advances in knowledge demand life-long learning — but there is a long tradition of professions as ‘knowledge-communities’.
  - The key question is what does a member of the relevant profession need to learn and at what stages should this be learnt or reinforced?



# Education and the nature of profession

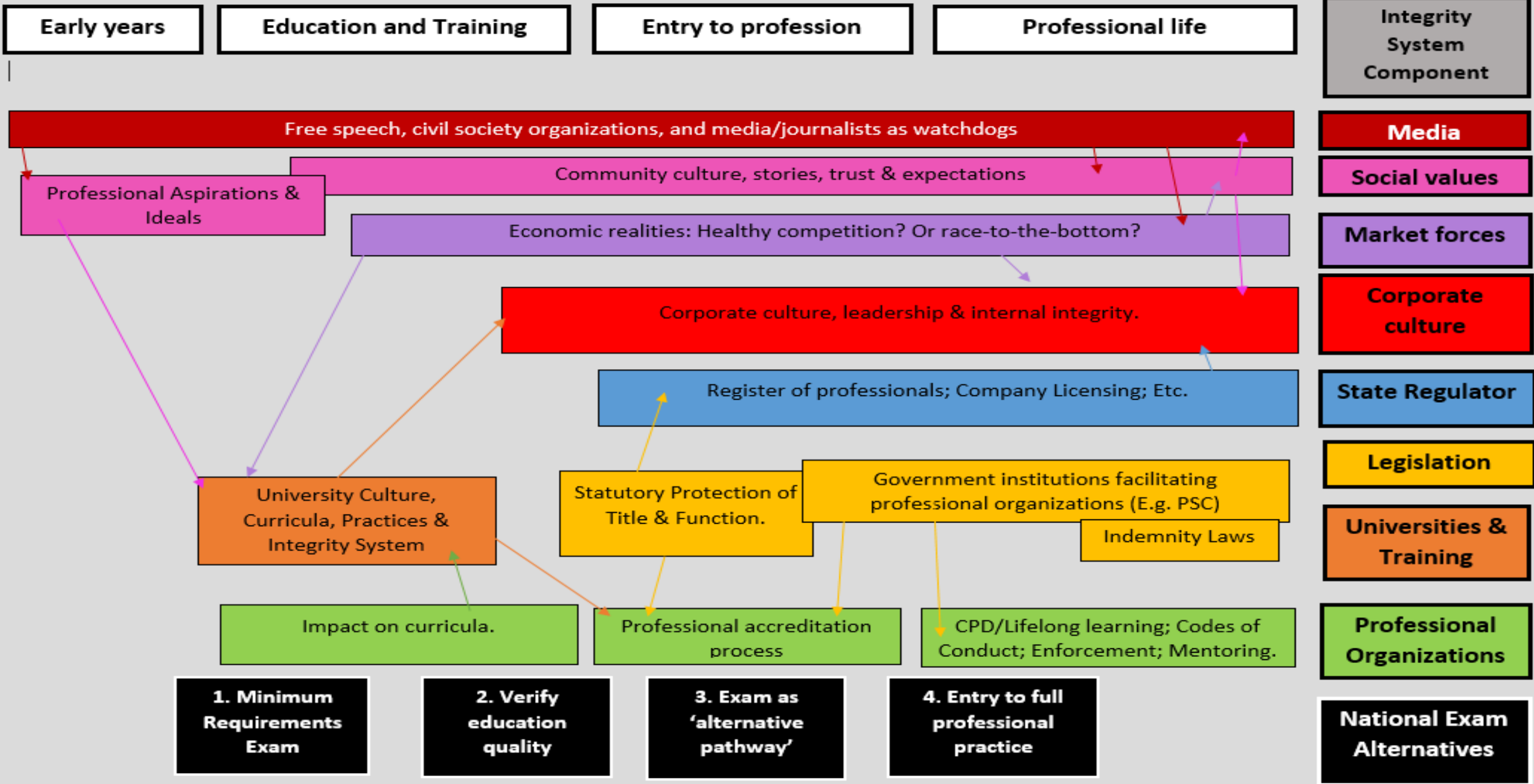
- What is a profession?
  - Acknowledged public good.
  - Body of skills and knowledge applied to securing the public good that is built, challenged and developed by the profession.
  - Entry and exit to the profession dependent on those skills and knowledge and a code of conduct in which the public good comes first, the client comes second and the professional comes third.
- The question for introducing an exam is how it will impact on the education and knowledge aspects of each of these three critical factors.

# Testing ethics through an exam?

- There are now few who deny the importance of ethics in the professions in general and in an emerging financial profession in particular.
- Can the exam test ethics? Exams struggle to test ethics because:
  - Ethics is not just a matter of knowledge, nor of right and wrong answers.
  - Ethics must be integrated into everyday practice and context.

# Understanding integrity systems

- The decision to implement a national exam should be made strategically, with specific objectives in mind, and with full awareness of the existing system's strengths and weaknesses.
- Potential risks to the system:
  1. The exam might entrench only minimum standards;
  2. The exam may stymie the growth of professionalism;
  3. The national exam may engender false trust.



Example Integrity System, canvassing four different options for the National Exam

# Conclusion

- Alongside all the existing and potential elements of an integrity system governing a profession, a national exam stands as one option for raising standards.
- Introducing it may well prove beneficial, but only if it is strategically placed so as to enhance and complement the system's functioning, rather than replacing or distracting from it.

# **Mapping differences in professional models and professional practice across the globe**

Authors: Alex Roberts and John Chellew

# Overview

- Regulating Professions: Structural Types
  - The Concept of Regulation
  - Structural Types of Regulation
- Regulation of Doctors
  - Australian Doctors
  - UK Doctors
- Regulation of Financial Planners
  - Australian Financial Planners
  - UK Financial Planners
- Conclusion

# Regulation of Doctors

- Australian Doctors
  - Government Regulation
  - Industry Association Role
- UK Doctors
  - Government Regulation
  - Industry Association Role



# Regulation of Financial Planners

- Australian Financial Planners
  - Government Regulation
  - Industry Association Role
- UK Financial Planners
  - Government Regulation
  - Industry Association Role

# Conclusion

- Issues Arising out of the Research
  - How Can an Association Balance Dual Self-Regulatory and Co-Regulatory Roles?
  - Do Rule-Based Command and Control Statutory Regimes Restrict Professional Associations?
  - Is There a Trend towards Meta-Regulatory Approaches?
- Further Research Direction

# Key Questions

- What is the point of professional regulation?
- What are we trying to achieve when we regulate professionals?
  - Influence professional behaviour
  - Consumer protection
  - Public good
- Responsive regulation
  - Flexible
  - Risk-based
  - Regulatory partnerships

# Key Questions

- What is the role of the professional association in regulation?
  - Co-regulator /self-regulator
  - Setting standards: professional practice and ethical standards
  - Capacity to act as a regulator as well as a membership body
- Challenges for professional regulation

# **The Promise of Professionalism in the 21<sup>st</sup> Century**

**Authors: Justine Rogers, Dimity Kingsford Smith, Thomas Clarke and  
John Chellew**

# Research context

- The desire for professionalism
- Research Question: What is the promise of professionalism in the 21st century?
- Answer this by addressing four sub-questions:
  - What is the classic understanding of professionalism?
  - What are the major challenges to this conception?
  - What are some of the responses to these challenges?
  - What continues to be its promise?
- Methodology: use law as example of status/ institutionalised profession – chart its circumstances and directions – to supply lessons for banking and financial services

# Central Ideas and Mechanisms of Professionalism

- The Regulative Bargain



# Mechanisms and Goals

Identity &  
Culture

Autonomy

Expertise

Market

Ethics

Status



# Changes and challenges

- Competition and Consumerist Client Care
- The Sovereign Client
- Remuneration and Billing Structures
- The Rise of the Organisation
- Globalisation



# Responses to these Challenges

1. Personal Responsibility and Competence
2. Amp-up 'Identity Work'
3. Shift to 'Entity' Regulation
4. **Re-Regulation**



# The Promise of Professionalism

- Expert advice and knowledge of a practical sort
- An ethical and altruistic alternative to the norms of banking and commerce
- Human agency and internal motivations
- Modern professional regulation

# Conclusion

- Professionalism and work in and with large organisations
- Effective ethical settings and motivation
- Co-habitation of professional norms with regulatory norms and effective regulatory strategies