



## **Ethics in the practice of law: a profession, a business or both?**

**5:30pm – 7:00pm, Tuesday, 20 June 2017**

**Ceremonial Court of the Federal Court of Australia  
Level 21, Law Courts Building, Queen's Square, Sydney**

This, the second ethics themed Sydney event of the Academy for 2017, brings together an eminent panel of participants in the Australian legal services market to debate the tension between the ancient fiduciary-based ethical principles on which the legal profession is based and the modern mercantile profit-driven business objectives of those who make their living out of the practice of law.

While that tension has long been a feature of legal practice, it has become more acute as firms have grown larger and more profitable (and more expensive to run), a rapid evolutionary process that, in a few short decades, has found its apotheosis in today's global law firms of +1,000 partners with billings in the billions of dollars. Some firms have even become listed companies, a significant legal development that has imposed additional layers of duties and responsibilities on the principals and yielded mixed success.

### **Questions**

These developments raise many questions, including:

- What does it mean to be a legal "professional" today anyway?
- Are ethics rigid and immutable or are they malleable? Some ethical concepts are non-negotiable but some are open to interpretation – which are which?
- Is being a professional always compatible with running a business? In what ways are they inconsistent?
- Lawyers are fiduciaries with respect to their clients. The essential fiduciary duty is to avoid conflicts, particularly between loyalty to the client and the lawyer's self-interest. Lawyers also have higher duties, including as officers of the Court. How well are these duties and conflicts managed in a profit-driven business environment?
- Does the answer differ as between transactional practice and litigation? Is the conflict somehow more acute for a lawyer deciding as between settling a dispute matter early and running it to trial (and possibly appeals)? To what extent do contingency fees and litigation funders create the potential to distort the calculus?
- Managing conflicts between clients: is there a difference between what the courts require and how firms manage them?
- Pro bono work: does this provide a sufficient counterbalance?

- Lawyers are largely self-regulated through law societies and bar associations. Is this adequate and appropriate in the 21<sup>st</sup> century?

### **Format**

The format will be a panel discussion, with a chair-moderator and speakers representing different constituencies in the Australian legal services market. The panel will address questions raised by attendees in their RSVP form and the chair-moderator will also take questions from the floor during the debate.

### **The panel**

The panel will be comprised as follows:

Chair and moderator: **Fiona McLeod SC**, President of the Law Council of Australia

Panellists:

**Don Robertson**, Partner, Hebert Smith Freehills

**Noel Hutley SC**, Barrister Sydney and former President of the New South Wales Bar Association

**Dr Attracta Lagan**, Ethicist and Founder of Managing Values

**John McKenzie**, Legal Services Commissioner for New South Wales

**Linda Tucker**, Chairperson, Community Legal Centres New South Wales

Please register for this event at <http://www.academyoflaw.org.au/events> by Friday 16 June 2017.