

405

AUSTRALIAN ASSOCIATION OF PRACTICE MANAGERS LIMITED

SECOND NATIONAL CONFERENCE

MANLY PACIFIC INTERNATIONAL HOTEL

PRESIDENT'S DINNER, FRIDAY 22 APRIL 1983

REFORM IN THE PROFESSIONS

April 1983

AUSTRALIAN ASSOCIATION OF PRACTICE MANAGERS LIMITED

SECOND NATIONAL CONFERENCE

MANLY PACIFIC INTERNATIONAL HOTEL

PRESIDENT'S DINNER, FRIDAY 22 APRIL 1983

REFORM IN THE PROFESSIONS

The Hon Mr Justice M D Kirby CMG
Chairman of the Australian Law Reform Commission

INTRODUCTION

It is fashionable nowadays for professional people to look around in anguish and despair at the evidence of their comparative decline. When the need arises, and the means are available, citizens will still go to the doctor, lawyer, dentist, accountant, architect or engineer. But even within the past two decades the relationship of the citizen to these professions has changed. Awe and unquestioning respect has been replaced by regard, tinged by a measure of scepticism. High comparative income levels have slipped. As a community, Australians are now rewarding others more generously than they reward orthodox professionals. The decline in financial fortunes begins in the universities.

In the three years after 1975 the number of students with TEAS allowances rose by 10%, but in 1979 the number of assisted students actually fell by 6%. The effect of these changes in policies by the State and Commonwealth Governments is that the number of assisted first degree students fell by one third between 1975 and 1979. Support for post graduate students has also declined. ... The number of new university awards in both 1975 and 1976 was 900. That number was reduced to 800 in 1977 and to 700 from 1978. Whereas in 1975 there were 2,225 post-graduate students on these awards, by 1979 the number had fallen to 1,910 - a reduction of 14%. The number will be still less this year. The decline in the value of these post-graduate awards has been even

greater than the decline in the number. The stipend has not been increased since 1978 - and the value of the stipend has been reduced by inflation and by the decision to make it subject to income tax from 1979. ... In 1967, the basic post-graduate award was equal to two thirds of average weekly earnings, but now it is one third. That rough treatment has reduced the morale of post-graduate students and of the staff who supervise them.¹

The decline in fortunes and comparative advantage which begins in the declining support of excellence in universities, extends itself throughout the modern professional's career. His relationship with the public is changing and the changes will continue. According to survey opinion polls less status is attached to many of the old professions than in the past. In the pecking order of community respect, some of the old established professions are being replaced by new technologists: a symptom of the priorities of our time, which will undoubtedly have their impact on the professions and professionalism.

My assigned subject is reform in the professions. Quite apart from mild feelings of discomfort and loss of place, the professions are now increasingly under public scrutiny. Long established modes of self-government and self-regulation are coming under the microscope of public attention. In this paper, I proposed to cite evidence of the changing relationships between the professions and the community. I will then seek to advance reasons for the apparent decline in status and power of the professional man and women. I will also venture one or two thoughts concerning the future².

EVIDENCE OF A CHANGING ROLE

There are some critics who talk of the decline and fall of the professions. I am not so pessimistic. Professionalism has a distinct place even in today's sceptical world. Some qualities of professionalism are worth keeping: rigorous training, the acquisition of a liberal education, the pursuit of excellence in service beyond the necessities of remuneration and devotion to a higher ideal of community service.

These qualities are still alive today. But we will be deceiving ourselves if we do not recognise that the relationships between the professions and the community are changing rapidly. In the law, two major inquiries have been launched. In New South Wales the Law Reform Commission has virtually completed its inquiry. In Western Australia, a separate inquiry has commenced. The reports of the New South Wales Law Reform Commission have suggested changes in the organisation, activities, remuneration and discipline of the legal profession of New South Wales. The Commission's reports have suggested reform in the general regulation, complaints handling, advertising and professional indemnity insurance of the legal profession.

Even in advance of legislation, major modifications have been introduced by the Law Society of New South Wales to permit lay involvement in the investigation of complaints against solicitors. Compulsory professional indemnity insurance has been introduced along lines similar to those proposed by the New South Wales Law Reform Commission. Compulsory professional indemnity insurance for solicitors has also been introduced in Victoria, Queensland and the Capital Territory. The participation of laymen in scrutinizing complaints has now been accepted in several States. In Western Australia, in a reversal of previous attitudes, the President of the Law Society announced the acceptance of the desirability of lay participation.³ Legislation and inquiry of this kind is not confined to the legal profession. It is not confined to this country.

In Britain, two Royal Commissions reported in 1979 after extensive inquiries into the provision of legal services in England and Scotland. The English Commission, although suggesting the retention of the division of the legal profession into solicitors and barristers and the effective monopoly in paid land conveyancing and advocacy, did suggest a number of changes. Amongst these were the change to permit solicitors to advertise special skills and to publish brochures, notification of legal aid and the establishment of citizens' law centres.⁴ The Scottish Commission was in many ways more radical in its proposals. Different views may be held about the proposals for change. Clearly, the Royal Commissions evidenced a concern in government circles about the delivery of legal professional services to the community. Even before the Royal Commissions had reported, the Monopoly and Mergers Commission in Britain had criticised the two-counsel rule and the rule against professional advertising.⁵

In Canada, a number of inquiries have been held touching the organisation of the legal profession. In a report in 1968, a Royal Commission of Inquiry into civil rights identified a 'real risk that the power [of self-regulation over members] may be exercised in the interest of the professional occupation rather than in that of the public'.⁶ It was recommended that 'adequate safeguards' should be introduced to ensure against injury to the public. In Quebec, an Office of the Profession was established in 1974 to provide 'external directors' for the governing bodies of the professions in that Province. Whilst retaining a great measure of self government, the Office has ensured infusion of layman and non-professionals into the governing bodies of the professions and the establishment of clearer criteria for public accountability. In Ontario and other Provinces (such as Manitoba) steps have been taken to include a number of laymen in the governing body of the legal profession, not only for disciplinary proceedings but for the general government of the profession as well.⁷

Nowhere has this change in the organisation of the legal profession gone further than the United States. In California, for example, the State Bar has been required by legislation to include up to six 'public representatives' on the 21-member Board of Governors. The reason given for the legislation, when introduced, was the desire to achieve 'public accountability' of the Bar. The inclusion of 'consumer representatives' in a number of State Bar bodies has led to bitter criticism by the American Bar Association.⁸ But quite apart from action by the legislature, in the past decade the courts in the United States have recently stepped in to change long-established professional rules concerning the obligation to charge a minimum fee⁹ and limitations on professional advertising.¹⁰

The medical profession has not been immune from this pressure, although it has been able to contain the pressures for change rather better than the legal profession has.¹¹ Nonetheless, at least since the introduction of Medibank, there has been a somewhat different relationship between the medical profession and the Australian community. In South Australia, the medical profession is subject to price control. At the Economic Summit, the suggestion was made for submitting professional fees to the advice of the Arbitration Commission.

Accountants are another case in point. They too are subject to increased public scrutiny by committees of inquiry and face the prospect of further government intervention. Within the last month it was announced that an Accountancy Standards Review Board would be established to regulate accounting standards throughout Australia.¹² In June 1978, when he addressed the Annual Congress of the Australian Society of Accountants on 'Accounting Standards', the then New South Wales Attorney General (Mr Walker) expressed the view that elaborate auditor and accounting procedures for public companies might serve no purpose if the end product was a 'meaningless' and 'virtually useless' report.¹³ He referred to the examination of the accounting profession in South Australia and expressed 'considerable concern' that:

not only can anyone tack up a shingle' and call himself an accountant but convicted rogues and proven incompetence can continue to practise with impunity. It is true that such people will not secure registration as company auditors or public accountants nor will they be tolerated as members of either the Society or the Institute. But they can still legally act as accountants.¹⁴

Mr Walker explained the steps taken to provide more effective protection to shareholders, creditors and employees of companies and the community generally. He referred to the establishment of the Accounting Standards Review Committee, whose report is now available.¹⁵ That report demonstrates the fact that the concerns of which Mr. Walker spoke are reflected in official and professional inquiries into the accounting profession and its practices in the United Kingdom and the United States.¹⁶ It now seems that these concerns will be translated into concerted Australia-wide and legislative action.

The point could be made by reference to other professions too. For example, the Trade Practices Commission has refused an application for exemption by the representative bodies of professional engineers on the grounds that their rules governing minimum fees and restrictions on advertising tend to monopoly. The decision is now on appeal to the Trade Practices Tribunal. Everywhere the professions are under new scrutiny. Sceptical examination by a society no longer overawed with the pretensions of the professions. Why should this be so? What has happened to explain the relative decline in status, prestige and unquestioning respect of the professional in the space of a decade or two? In discovering the answers to these questions we may be able to prognosticate the future.

REASONS FOR DECLINE

Fundamentals. There seems little doubt that the professional man and woman today does not enjoy the same status, public esteem, government confidence and relative salary advantage of equivalent professionals in days gone by. Why should this be so? In part, the explanation is to be found in the changes of society which have occurred and which will not be reversed. In part, the changes are within the control of professions.

The features of professionalism which were formerly stressed by professionals themselves were personal integrity, service to the community, a shared code of proper behaviour and, ultimately, a devotion to higher 'ideals'. These last were rarely identified or spoken of because of the proper sense of professional modesty. But in the case of the medical profession, it was a devotion to the relief of pain and suffering and the service of humanity. In the case of the legal profession, it was a devotion to the proper ordering of society so that people could live together in peace with respected institutions and confidence in the impartial application of the rule of law. In the case of the accounting profession, particularly in auditing, it was a dedication to economic honesty in financial affairs, so that funds entrusted to the few on behalf of the many were properly dealt with and publicly accounted for. In the case of professional engineers it was commitment to the safety of large public and private works. In architecture, it was commitment to the improving the beauty of the environment.

The 'higher ideals' have now begun to come under question. Critics, including intelligent critics from within, have suggested a basic conflict of interest and duty in the way in which professional bodies 'look after their own'. In the context of the legal profession, an English commentator put the problem thus:

The Law Society's dual role of trade union in representing the interest of its members and judge [in the case of disciplinary matters] can no longer be tolerated. Indeed we would not be surprised if there were not a breath of relief in Chancery Lane were the Law Society allowed to act solely as the professional body for solicitors and no longer had to pretend to be all things to all men.¹⁷

Other commentators suggest that it is simply impossible for professional people to ignore their economic self interest, where this comes into conflict with duty to the community, especially deprived, inarticulate and underprivileged members of the community.¹⁸ Still others suggest that the decline in confidence in the professional attachment to higher values is merely one instance of the general loss of confidence in institutions in society which continued apace during the 1970s and 1980s.

Greater Access. A second consideration is the change in the access which ordinary citizens have to the profession. Last century, access to the medical profession (and even more to the legal profession) was quite beyond the purse of ordinary people, except in cases of direct need. National health care, compulsory motor vehicle insurance, workers' compensation insurance and other protections now assure a much more universal access to medical and para-medical professions, pharmacists and others. For all its imperfections, the system of legal aid (and the facilities of legal assistance offered by trade unions and others) ensure that an increasing number of our population now get to a lawyer. The growth in general prosperity and the almost universal obligation to file income tax returns ensures that pressure is placed on even ordinary citizens to secure accounting advice and assistance. Patented architectural plans are available, in many copies to home buying consumers. Nowadays, there are even funds to insure for veterinary assistance. In the context of medicine, this increase in access was put thus:

The precipitous slide [in esteem] reflects what happens when an increasingly sophisticated public begins to detect fallibility in the professionals once thought to border on the divine. I don't see a deterioration in the quality of medicine, but a greater awareness of what our deficiencies are.¹⁹

More Professions. In addition to greater access to those professions which exist must be added the consideration that nowadays professionalism, or at least the claim to professionalism, is much more commonplace than it was even a decade ago. In Britain the Monopoly Commission was able to identify 130 bodies claiming to be 'professional'. Within the past 5 years or so, computing science has produced a large and vital new employment group with claims to professional status, at least amongst some of its members. As a proportion of the population, the number of people contending that they are 'professional' has greatly expanded in recent years. But the mystique that attaches to remoteness and comparative rarity, tends to get lost in a much more knowledgeable and interdependent community.

Not only are there more professionals to whom there is greater access, but an increasing number of professionals, including in the old and 'learned' professions, are now salaried employees. This was comparatively rare in the 19th Century and indeed well into this century. But it is an increasing phenomenon today as market efficiency imposes on professionals the obligation of corporate organisation or partnership and amalgamation.

Consumerism. The growth of consumerism is a by-product of a society better educated and more conscious of its rights. It was inevitable that as general compulsory education expanded, the professional position of some occupational groups would be increasingly questioned by sceptical outsiders. The rising costs of health care, the fees required for legal representation, and so on produce demands that these professions should submit to the same rules of fair trading and competition as are now enforced, by law, against trading corporations and business men. In the United States, one medical practitioner, reviewing the situation lamented:

People aren't outraged when the quarterback holds out for what he can, but they expect different treatment when it comes to the doctors.²⁰

In Australia, this comment has an added significance because of the system of compulsory conciliation and arbitration and the tribunals which assess and vary the remuneration of wage and salary earners. When employees and public officers from the Prime Minister down are submitted to external tribunals of this kind, taking economic considerations into account, there is inevitable pressure that the professions should be deprived of unrestricted control of their own professional fees. Especially when the public purse picks up a large measure of the professional fees charged, it is scarcely surprising that public pressure should be mounted to submit those fees to public scrutiny and regulation. It is for that reason that the suggested role of the Arbitration Commission in relation to professional fees should not be seen as remarkable : even if it faces serious legal and constitutional hurdles.

Growth of Government. The most important factor in the changing state of professionals is the growing role of government. It starts with the vital part played by government in the training of professional men and women. Increasingly, the day-to-day life of many professionals is dependent on the public purse. The tremendous investment of public funds in Australia in health services inevitably directs the attention of government and its officers to the efficiency of the public expenditure. It is inescapable that this public investment, consistent with our constitutional system, will lead to a lessening inclination to leave things entirely to professionals themselves. More and more lawyers are paid by the public purse. In 1977, Lord Rawlinson said that public monies now account for more than half of the income of English barristers.²¹ Professor Michael Zander has put the point this way:

The importance of ... external controls [on the legal profession] is, of course, increased by the volume of public monies now applied to legal services. In 1975-76 the fees paid to private practitioners out of the public purse aggregated some 77m (31m for civil legal aid and legal advice and assistance, 32m for criminal legal aid including magistrates' courts and 14m for prosecution fees).²²

As more government money is channelled into professional pockets, more demands will be made for a community say in the way those funds are spent. Such a say is not necessarily a bad thing. The concept of the courts having some control over the fees arising out of litigation goes back to the 15th century. A client's right to ask for the taxation of a solicitor's bill has existed by statute since 1729. The question is not whether there should be public regulation, for that already exists to some extent. The issue is rather how much regulation there should be and how it should be exerted, consistent with the good qualities of professionalism. The demand for greater public regulation and the diminished willingness to leave things to the professionals themselves both reflect and explain the diminished significance of professional organisations.

In Australia the amounts pumped into medical and health services have reached very great proportions indeed. The Commonwealth is funding legal aid at the annual rate of \$24million.²³ Although most other professions have not yet secured the same measure of direct public assistance, it would be wrong to say that they are left out of the growth of public involvement in the professions. For example the obligations of the accountant as auditor arise from legislation designed to decentralise the auditing function, which is in every sense a public activity established to protect the interests of creditors, shareholders and the community as a whole. Nearly half of Australia's professional engineers are employed by government. The direct and indirect importance of public sector activities for the health of the professions is manifest.

Living on the Fat: Continuing Education. In a world of rapid change, when the Federal and State Parliaments of Australia produce between them each year more than a thousand Acts, when this figure is multiplied many times by subordinate legislation, much of it affecting professional services, an acute question arises as to whether professional qualifications should be a 'ticket for life'. I am aware that it is necessary to get clearly in focus the precise aims which continuing education of the profession will pursue. Previous models of the learning process may not be appropriate for the continuing education of professionals who have already established their professional credentials.

Within the legal profession the debate about continuing education is becoming increasingly vigorous, under the pressure of the Inquiry by the New South Wales Law Reform Commission. One of the Judges of the Supreme Court of New South Wales, Mr Justice Yeldham has debated the arguments for and against a form of continuing professional education and concluded thus:²⁴

[S]peaking for myself, and speaking with considerable diffidence in a field such as this where experts fail to agree, and where the Law Society, for whose views I have the utmost respect, has recommended a voluntary scheme, I incline to the view that there should be some compulsion requiring all practitioners to undertake some form of study. Such a scheme would probably involve an applicant for a practising certificate producing evidence to the Law Society, perhaps every third year, that he or she has spent a minimum number of hours studying to improve his or her legal competence, the details being furnished. This would undoubtedly involve, inter alia, attendance at some of the seminars conducted by the College of Law. To this I would add the reservation that any scheme must be careful to avoid unfairness and it would make due allowance for the legal profession as a learned calling and must also define the need or needs of the profession which must be met. Since 1975 mandatory continuing legal education programs have been introduced in at least nine American States which in general require as a prerequisite for the retention or renewal of a practising certificate, attendance at approved courses for a minimum number of hours for a set period. In Minnesota, which was the first mandatory scheme, all the lawyers and indeed Judges were required to take 45 hours of continuing legal education courses every three years. ...

There is an inconsistency in requiring mandatory detailed education before but not after admission to practise.²⁵ Contrary to popular opinion, the law is changing rapidly. Many practitioners today practise largely in fields in which they have had little or no formal

education because the field did not exist when they were at University or was not considered then to be worthy of attention. It appears likely to me that these observations have relevance for the accounting professions as for the legal profession. It probably has relevance to other professions as well.

A professional, dedicated to excellence of service and higher ideals, cannot afford to live on his educational fat. This is especially so, as the law expands the scope of the liability of the professional man. It seems that the solicitor, for example, may no longer be liable to be sued only in contract by his immediate client.²⁶ Recent authority in England suggests that all those persons who were properly within his contemplation as relying on his advice may be owed a duty of care by a solicitor giving advice.²⁷ By parity of reasoning, the scope of the liability of other professionals giving advice may be equally extended beyond their immediate clients to a wider dependent community.

Recurrent Disappointments. Quite apart from these more general considerations (many of them beyond the control of the professional man and woman) there is little doubt that the respect for the professions has diminished in recent years as a result of bad publicity which they have all received. Front page spectacles of well-heeled doctors being convicted of frauds against Medibank, major defalcations by lawyers, the failure of accountants to present what laymen conceive to be 'true and fair' accounts, the collapse of a bridge for failure of the engineer's design, all damage the public respect for the professions. Each case diminishes, marginally, the capital of goodwill built up by the devoted work of honest, industrious and dedicated professional people.

The Impact of New Technology. In all probability the greatest force for change in the professions of the future will be none of the above. Scarcely a day goes by now but we read in the popular press or in our own professional journals, of the impact on the professions of technology, especially new information technology.

For example, Prince Henry's Hospital in Melbourne has now established in its intensive care units a computerised monitor which will advise the medical and paramedical staff of the condition of seriously ill patients and even adjust their care according to predetermined variable programs.²⁸ At the heart of the micro-computer being used is an integrated circuit (or 'microchip') which costs only \$10. For patients needing intravenous therapy, the micro-computer is programmed to assess and deliver the precise amount of fluid needed, even if the doctor is not present. The computer makes adjustments for details such as pulse rates, blood pressure and urine output. It controls ventilation to support breathing and improves the accuracy of therapy.

The Law Society's Guardian Gazette constantly draws attention to the impact of computers on the lawyer of the future. It adverts to one of the most significant features of the report of the Royal Commission on Legal Services, namely its numerous references to the benefit of mechanisation in the legal profession.²⁹ It describes the way in which computers will be used for the accounting and costing of legal services. It also described the utility of word processing and the retrieval of legal information. Australian law journals increasingly fill the same role.

There are some who take a pessimistic view of the impact of micro technology on future employment prospects in the professions. Christopher Evans, in a 1974 book, The Mighty Micro devoted a chapter of his analysis of the impact of computerisation of society on what he described as 'the decline of the professions'. This is his thesis:

The erosion of the power of the established professions will be a striking feature of the second phase of the computer revolution. It will be as marked and perhaps even more so as the intrusion into the work of the skilled and semi-skilled, although the notion of precipitous unemployment among factory workers and clerks tends to be the centre of debate. The vulnerability of the professions is tied up with their special strength - the fact that they act as exclusive repositories and disseminators of specialist knowledge.³⁰

Evans' thesis is that at the heart of professional skills is accumulated knowledge and information. He concedes the element of craft: no computer in the foreseeable future will replace the human surgeon's skill or the advocate's oratory. He concedes the special element of wisdom and the importance of human judgment and discretion. Having conceded these qualities, which may be impervious to the impact of the microchip, Evans still argues that a great deal of the routine work of the professions is just that: routine. It involves the application of accumulated knowledge to established facts. Not only does Evans believe that computers will be able to do much of the work of professionals at this level. His assertion is that computers will be able to do the job better.

In support of this contention, Evans cites the case of medical interviewing with which computer experts have been experimenting during the whole of the '70s:

The initial questions (the 'history taking' in medical parlance) are extremely easy to formalise, and the preliminary diagnosis - for example a possible gastric ulcer - and the decision about further investigation and treatment - a recommendation to X-ray, a special diet and so on - follow more or less

automatically in the majority of cases. Computer programmes have already been written which take satisfactory histories in a large variety of common complaints, make relatively simple recommendations for follow-up studies and even offer tentative diagnoses. And they do it all with such panache that the majority of patients interviewed by the computer prefer it to the doctor. There is also clear evidence that many patients are more truthful when they talk to the computer and are more willing to reveal their secrets to it than to a human being. In some experiments in a Glasgow hospital patients suspected of being alcoholics were interviewed by a specially tailored computer programme; they admitted drinking 50% more alcohol to the computer than they did to the clinic's highly trained consultants. In other experiments, patients visiting psycho-sexual clinics showed real eagerness to chat about sexual hangups to a computer, in striking contrast to their reluctance to talk to the most sympathetic resident psychiatrist.³¹

Evans' prediction that the 1980s would see the healing professions turning increasingly to computers is a safe one. In a country with large ethnic populations, specially programmed interrogations in ethnic languages via computer have a particular usefulness. If it is already suggested that we are turning out too many doctors from our medical schools, the impact of computerisation on the healing professions will not be to create more jobs for the orthodox professional. It will be to create more jobs for the computerist. The number of decisions requiring wisdom, experience and skill will be smaller. The needs for true professional judgment, released from the routine of preliminaries, will be fewer. The skills required on fewer occasions by smaller numbers will be different. They will become the skills of interpreting the product of technological analysis.

I hasten to say that nobody is predicting that we are on the brink of a world in which a decision to remove an arm will be made by robot computer. Of course this will not happen. Furthermore the revolution of which I speak will not occur overnight. But if we look into the 21st Century, there is scarcely a phase of life that will not be affected by the new information sciences.

Within the legal and accounting professions, the impact of computerisation will, I am sure, go beyond a few improvements to office accounting, the word processing of routine precedents and letters and the occasional use of computers to retrieve an obscure statute or legal precedent. I believe that computerisation will profoundly affect the actual work of the legal and accounting professions, replacing a great deal of the work that is presently routinely performed under professional supervision.

The report of the Scottish Royal Commission on Legal Services recommended that lawyers in Scotland should not retain their exclusive right to undertake domestic conveyancing for a fee. A similar monopoly is enjoyed by the legal profession in many States of this country. Its retention in Victoria was upheld by the Dawson Committee report. The Scottish Royal Commission came to a different conclusion. It urged that thought should be given to the registration of title and the introduction of a simple, computerised conveyancing system provided at low cost by the State, so that domestic conveyancing could become a matter of relatively cheap routine. Again this will not come about overnight. But neither in Scotland nor in Australia does the world owe the professions a living. A great deal of the routine work of the legal, accounting and administrative professions is susceptible to computerisation. Conveyancing is a notable example. But there are others. In the accountants' world is there any doubt that the auditor's function will change greatly as more and more records are computerised? Already the word processor, with its capacity to retrieve precedents with appropriate modifications, is showing what can be done. The high costs of the delivery of legal and accounting services and the burden these costs place upon access to justice and to legal rights will force governments and professions to look for new ways of efficiently organising at least the routine work.

THE FUTURE

The Present Position. This, then, is the position we are at. The community is generally more sceptical about institutions, including the professions. Members of the community have greater access to the professional. There are today many specialised, highly talented vocations, many more than the orthodox old established professions. Consumers find it difficult to distinguish between their rights in relation to others who sell goods and services and their rights in relation to professionals. Governments, increasingly important in the funding of professional services, increasingly demand a say in the expenditure of public funds. Professional knowledge now moves so fast that 'living on the fat' of an old university degree can no longer be a sound basis for professional claims. Yet few professions outside the medical profession have yet come to grips with the obligations of continuing professional education. The good name of the established professions is undoubtedly damaged by front page headlines of professionals 'gone bad'. Above all, the impact of science and technology is changing the role and stable work of the professions. They will be no more immune from its onrush than manual workers.

In all of these circumstances, it is inevitable that professional men and women of the future, will have a somewhat different life and enjoy a different place in society. Respect that grew out of infrequent contact, blind faith and unquestioning reliance on the professional has gone, probably forever. Certainly it is significantly diminished. I do not believe that professional people should lament assessment of their qualities according to human standards. The bad publicity which attends individual default is partly beyond the control of the single professional. But it may require greater sensitivity to complaints by outsiders against colleagues, especially where their faults are indifference rather than venality, incompetence or failing to keep up with the latest law or professional developments, rather than frank crime.

The role of the government is likely to increase and to affect more professionals as they become dependant for the livelihood on Treasury funds. Government regulation of the professions is not an unmitigated evil to be avoided at all costs. To some extent, the involvement of the whole community, through its representatives and officers, is an inevitable consequence of a society that is much more interdependent.³² Especially if the professions cannot move with greater speed in their own effective self-regulation and self discipline, and in laying down effective standards and independent, rigorous machinery to uphold standards of competence as well as honesty, the involvement of the community is both legitimate and inevitable.

Four Themes. The theme to which I believe thinking professionals should address their minds as they enter the eighties are four. Of the first, the impact of technology on the profession, I have said enough. On self-regulation of the professions, I believe that until clear standards are laid down, in sufficient detail to make plain to the professional, the client and the public the personal obligations of the individual professional, and until those standards are effectively upheld by an independent and rigorous disciplinary process, the professions are not entitled to insist on self regulation.

The third theme concerns the community voice. I have referred to the moves in Australia and the United States in the legal profession for a greater lay participation in the affairs of that profession. But these moves are not confined to North America and this country. In Britain a 'lay observer' has been appointed to scrutinise the handling of complaints against lawyers. In New Zealand a significant reorganisation of professional disciplinary processes and professional government contemplates a growing involvement of the laity.³³ It seems likely to me that there will be increasing pressures in the future

for a community voice in disciplinary matters and ultimately, possibly, in the government of the professions themselves. The myopia which can come of too close an involvement in a particular discipline must be weighed against the special knowledge and experience of the professionals themselves and their particular feeling of responsibility for the state and future direction of their calling.

The fourth theme concerns continuing education. With Mr Justice Yeldham, I express a personal view that the world of today is moving too fast to permit any professional man or woman the luxury of a single professional qualification, never renewed and never systematically updated. The medical profession has long been organised to service its members with continuing education in the developments of knowledge and the healing sciences. In the law, in accounting and in other professions the pressures for continuing education stem principally from the constant flux of the laws and of technology which must be learned, understood and applied in a skilled accurate and up-to-date way by the professionals involved.

The challenge before professionals today is the challenge of change. The professional ideal has been eroded, in part by the forces I have described, in part by community cynicism about professional monopolies and occasional perceptions of selfish pursuit of immediate financial gain.

Professionals tend to get judged by higher standard than commercial people. Some of them are resentful when the professional pursuit of high income possibilities is criticised. Yet the reason for this community criticism is, I believe, at the heart of the professional's claim for distinction. For at the heart of the professional ideal is the notion that, when the chips are down, the professional owes a duty to the community as a whole, will pursue the interests of his client or patient with dedication and to a high standard of excellence and will, where necessary, not be deflected by the inability of the client or patient to pay. Whether the professionals, now partly funded from the public purse, can maintain and expand these ideals of excellence and public service remains to be seen. If they cannot, or will not, then, to be quite frank, they deserve no higher status and no greater community respect than others who provide vital goods and services. What is more, the community will rapidly reach that conclusion and the special, unique position of the professional will be lost. Put shortly, professionals must justify and earn their claim to status, respect and privilege. The world does not owe the professionals a living. Whether these certainties are perceived in a time of rapid change, remains to be seen.

FOOTNOTES

1. B R Williams, Decline in Support for Students, Address at Conferring of Degrees Ceremony, A.N.U., 17 April 1980, mimeo, 2
2. Some of these observations previously occurred in an address to the State Congress of Australian Society of Accountants, 14 March 1980, and are to be published in The Accountant, 14 March 1980
3. G Miller, (President of the Law Society of W.A.), reported West Australian, 19 February 1980, 1.
4. Royal Commission on Legal Services (U.K.), Report, 1979, Cmnd. 7648.
5. For details see M D Kirby, 'Futurology' in R Tomasic (Ed.), 'Understanding Lawyers', 1978, 17.
6. J McRuer, Report of the Royal Commission of Inquiry into Civil Rights, 1968, vol 3, 1165.
7. H W Arthurs, 'Authority, Accountability and Democracy in the Government of the Ontario Legal Profession (1971)' 49 Canadian Bar Review, 1, 10; M H Freedman, 'Non Lawyers as Benchers of the Law Society of Manitoba' (1974) International Bar Assn, 68
8. American Bar Assn Journal, vol.63 (December 1977), 1677.
9. Goldfarb v. The Virginia State Bar 421 US 773, 95 S.Ct. 2004 (1975)
10. Bates and O'Steen v. State Bar of Arizona 433 US 350, 97 S.Ct. 2691 (1977)
11. R Sackville, 'The Professions Under Scrutiny', unpublished paper, 1979.
12. See Business Review Weekly, 9 April 1983, 81.
13. F Walker, 'Accounting Standards', address to Annual Congress, Australian Society of Accountants, Leura, 9 June 1978, mimeo, 5.
14. ibid., 18-19.

15. Accounting Standards Review Committee, Report, 'Company Accounting Standards', 1978.
16. *ibid*, ch.7.
17. (1977) 127 New Law Journal 48.
18. Z Bankowski and G Mungham, Imagies of Law, 1976. see Kirby, 5.
19. *op.cit* n 12.
20. *ibid*.
21. Lord Rawlinson cited in M Zander, 'Representation of the Public Interest in the Management of Legal Services', Law Society Gazette, (Eng) 23 February 1977, 167.
22. *ibid*.
23. Commonwealth Legal Aid Commission, Second Annual Report, 1979.
24. D A Yeldham, 'Maintaining Professional Competence', Address to the Medico Legal Society of N.S.W., 12 March 1980, mimeo, 15-16.
25. J Disney, 'Maintaining Professional Competence', Address to the Medico Legal Society of N.S.W., 12 March 1980, 5-6.
26. Robertson v. Flemming (1861) 4 Macq. 167, H.L. (Sc); Groom v. Crocker [1939] 1 KB 194.
27. Ross v. Cauters [1979] 3 WLR 605 (Megarry V.C.). For a similar decision in Canada see Whittingham v. Crease and Company [1978] 5 WWR 45 (Aikens J).
28. As reported, The Age, 11 July 1980, 3.
29. (1980) 77 Guardian Gazette 637. As to the New Zealand situation see S W Halstead, 'The Lawyer of the Future', [1983] NZLJ 37.
30. C Evans, The Mighty Micro, 1979, 111
31. *ibid*, 112-3

32. R J Chambers, 'Government Regulation' in Papers for the 1980 N.S.W. State Congress of the Australian Society of Accountants, mimeo, March 1980

33. For a report see Lawtalk (N.Z.), 27 November 1979. The Council of the Law Society of New Zealand decided that the Law Practitioners Bill governing the legal profession should make provision for a Legal Services Advisory Council to report on the whole field of legal services.