

# PARKER AND EVANS'S INSIDE LAWYERS' ETHICS

## *Fourth edition*

*Parker and Evans's Inside Lawyers' Ethics* provides a practical and engaging introduction to ethical decision-making in legal practice in Australia.

Underpinned by four theoretical concepts – adversarial advocacy, responsible lawyering, moral activism and ethics of care – this text analyses legal and professional frameworks in the Australian context. Relevant parts of the *Australian Solicitors' Conduct Rules* are highlighted, and the accompanying text provides guidance on professional obligations. Case studies and discussion questions offer contemporary, practical examples of the application of ethics in legal practice for both students and practising lawyers. The book also addresses the challenge of ethical action and offers skills and techniques to deal with ethical conflicts.

The fourth edition has been comprehensively updated and discusses the implications of advances in legal technology, mental ill-health in the profession and the complexities of government legal practice. A new chapter covers lawyers' ethical obligation to address the legal challenges posed by climate change and environmental damage.

Written by an expert author team, *Parker and Evans's Inside Lawyers' Ethics* empowers readers to identify ethical challenges and resolve them through good decision-making practices.

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*Fourth edition*

Vivien Holmes  
Francesca Bartlett

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# PREFACE

It is a privilege to build on the work of Christine Parker and Adrian Evans and offer a fourth edition of this groundbreaking book. The challenges facing the legal profession have not diminished since the last edition and we have written this new edition cognisant of the impact on lawyers of the digital revolution, ongoing challenges to mental health, sexual harassment in the profession, the need for more diversity and a healthier relationship with Australia's First Nations Peoples and their Law, and the challenge to our legal system of climate change and environmental destruction. To this last challenge we devote a whole new Chapter 10. For the first time, we address the ethical complexity of government legal practice, exploring the similarities it shares with corporate practice. We also consider for the first time some of the perennial and newer challenges to maintaining competency in practice. This edition includes substantially revised chapters and new case studies, and addresses in more detail the skills needed to *act* on what we know to be ethical.

As in previous editions, the book analyses and critiques lawyer regulation, conduct rules and case law on lawyers' professional responsibilities. The *Legal Profession Uniform Law* is in force in New South Wales, Victoria and Western Australia and its key legislative provisions are cited and explained throughout the book. We expand upon previous editions to refer to relevant provisions applying in other Australian jurisdictions and note differences in approach across the country. The *Australian Solicitors' Conduct Rules* remain the model for all the States' and the Australian Capital Territory's conduct rules. Recent amendments to these Rules that have been adopted in New South Wales, Victoria and Western Australia are included and considered in this edition. This edition also refers to conduct rules governing barristers that apply in most jurisdictions. An expanded section of Chapter 3 considers the historical development and distinctions in professional duties and orientation of barristers and solicitors in Australia.

We retain the original authors' central concern to connect a lawyer's humanity and values to competent, caring and reflective practice. Whether working as adversarial advocates, responsible officers of the court, champions of justice and/or caring professionals, lawyers will most effectively fulfil their duty to the administration of justice if they are guided by professional values and conscious of the ethical import of their work. This book aims to strengthen the ethical sensibilities and skills of students and lawyers, to enable them to contribute positively to the legal system, to healthy professional cultures, to the clients and other parties involved in the system and to their own wellbeing and career satisfaction.

Vivien Holmes and Francesca Bartlett  
July 2022

# ABOUT THE AUTHORS

**Vivien Holmes** is a Professor at the ANU College of Law where she teaches and researches in the fields of legal ethics, legal education and the legal profession. Prior to joining ANU, Vivien worked as a litigation solicitor in private and government practice, a government legal policy officer, a Court Registrar and Judicial Registrar, a Registrar of Probates and a Deputy Coroner. She has been a member of the Social Security Appeals Tribunal and is a member of the ACT Law Society's Professional Standards Committee.

Vivien's research has explored how to best equip law students to meet ethical challenges in practice. With colleagues, Vivien has researched the transition of new lawyers into legal practice and the links between lawyer wellbeing and ethics, including the impact of the ethical climate of legal workplaces. She is currently exploring with colleagues the potential overlap between unethical practice climates and incidents of sexual harassment and bullying. Vivien is passionate about lawyers using their skills to contribute to the change needed to address climate change and environmental destruction; Chapter 10 in this new edition explores this topic.

**Francesca Bartlett** is an Associate Professor and Director of Teaching and Learning in the Law School at the University of Queensland. She teaches and researches in the fields of legal ethics and the legal profession, and women and the law. Prior to joining academia, Francesca worked as a solicitor in a large law firm and at a community legal centre.

Francesca's research has explored admission to legal practice, professional discipline and apologies, and pro bono legal practice. Her work has also considered how to achieve diversity within the legal profession and the judiciary and how law impacts women. She was a Chief Investigator on the ARC Discovery-funded Australian Feminist Judgments Project and has received funding to undertake projects on technology and access to justice, and innovation and change in the Queensland legal profession. In addition to these projects considering the context of modern legal practice, Francesca is working with colleagues to develop best practices for lawyering in domestic and family violence cases and modelling pro bono within law schools.

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Francesca Bartlett extends her thanks always to her partner Robert Colvin for listening and support, and doing all the cooking. Thanks and love to Arthur and Anna for bringing the fun and being her critics and conscience. Thank you to Monica Taylor for insightful comments on environmental lawyering. Finally, her great thanks to her co-author for welcoming her onto the project and the kindness, collegiality, and intellectual clarity she brought to their collaboration.

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Some of the material in Chapter 3 is based on work previously published in Christine Parker, 'Competing Images of the Legal Profession: Competing Regulatory Strategies' (1997) 25(4) *International Journal of the Sociology of Law* 385–409.

Some of the material in Chapter 9 is partly based on Christine Parker et al, 'The Ethical Infrastructure of Legal Practice in Larger Law Firms: Values, Policy and Behaviour' (2008) 31 *University of New South Wales Law Journal* 158, 172, 174–5.

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# ABBREVIATIONS

|               |  |
|---------------|--|
| AAT           | Administrative Appeals Tribunal                  |
| ABA           | American Bar Association                         |
| ABC           | Australian Broadcasting Corporation              |
| ACC           | Association of Corporate Counsel                 |
| ACT           | Australian Capital Territory                     |
| ADR           | alternative dispute resolution                   |
| AFP           | Australian Federal Police                        |
| AG            | Attorney-General                                 |
| AI            | artificial intelligence                          |
| APP           | Australian Privacy Principles                    |
| <i>ASCR</i>   | <i>Australian Solicitors' Conduct Rules 2015</i> |
| ASIC          | Australian Securities and Investment Commission  |
| ASIS          | Australian Security and Intelligence Service     |
| ASX           | Australian Securities Exchange                   |
| ATO           | Australian Taxation Office                       |
| AWB           | Australian Wheat Board                           |
| BATAS         | British American Tobacco Australia Services      |
| CLP           | client legal privilege                           |
| <i>CP Act</i> | <i>Civil Procedure Act 2010 (Vic)</i>            |
| DPP           | Director of Public Prosecutions                  |
| EDO           | Environmental Defenders Office                   |
| ESG           | environmental, social and governance             |
| GVV           | Giving Voice to Values                           |
| IBA           | International Bar Association                    |
| ILP           | incorporated legal practice                      |
| JH            | James Hardie Industries Ltd                      |
| JHIL          | James Hardie Industries Ltd                      |
| JHINV         | James Hardie Industries NV                       |

|          |   |
|----------|---|
| LACC     | Law Admissions Consultative Committee             |
| LCA      | Law Council of Australia                          |
| LPBT     | Legal Profession Board of Tasmania                |
| LSC      | Legal Services Commissioner                       |
| MRCF     | Medical Research and Compensation Foundation      |
| NGO      | non-government organisation                       |
| NSW      | New South Wales                                   |
| ODPP NSW | NSW Office of the Director of Public Prosecutions |
| PILCH    | Public Interest Law Clearing House                |
| QC       | Queen's Counsel                                   |
| QLS      | Queensland Law Society                            |
| SCAG     | Standing Committee of Attorneys-General           |
| SEC      | Securities Exchange Commission                    |
| TLS      | Tasmanian Law Society                             |
| UK       | United Kingdom                                    |
| UN       | United Nations                                    |
| US       | United States of America                          |

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