

INDEX

- Aboriginal Circle Sentencing Courts, 6
 access to justice, 67, 77, 151, 229, 233, 250
 billing arrangements and, 258
 class actions and, 187
 client loyalty and, 243–4
 costs and, 249, 256
 legal fees diminishing access to justice in
 courts, 267–9
 remote and rural areas, 228
 administration of justice
 honesty and courteousness of a lawyer
 and, 196
 lawyers' duty to, 169, 175
 relationship of loyalty and, 235–40
 admission and certification, 78–85
 'fit and proper' person, 78, 79–80, 81
 'fitness test' for admission, 84–5
 'good fame and character', 78, 79
 adversarial advocacy, 2, 10, 28, 29, 30, 37, 52,
 205, 207, 347
 alternative dispute resolution and, 204
 as traditional conception of legal ethics, 31–4
 assumption of rule of law context, 36
 client–client conflicts and, 241
 climate change and, 335–9
 corporate lawyers and, 299–300
 costs and, 249
 criminal barristers as carers, 347
 criminal justice system and, 138
 criminal trials and, 157
 'hyper-zeal' of, 35, 36, 40
 ideal of client loyalty and, 241
 interests of clients and, 172–3
 lawyer–client conflict, 241
 lawyer's role in litigation and, 198–9
 limitations of, 34–6
 rationalisation and, 295
 relationship of loyalty and, 212
 adversarial imperative, 171
 advocates
 independence and integrity of, 152–8
 personal opinions, 154–6
Allison test, 85
 alternative dispute resolution, 202–3
 adversarial advocacy and, 204
 establishment of processes, 208
 limits to, 206
 outcomes, 207
 principles of, 205–6
 ambulance-chasing, 176
 American Bar Association
 Model Rules of Professional Conduct,
 196, 334
 AMP Ltd, 292
 sexual harassment concerns, 308–9
 Anthropocene, 327
 artificial intelligence
 moral judgement and, 52–3
 Association of Corporate Counsel Australia, 132
 corporate lawyers' reporting line and, 306
 General Counsel Oath, 285
 promotion of ethical corporate behaviour
 and, 307
 Australian Bar Association, 77
 Australian Competition and Consumer
 Commission, 68, 72, 192, 302
 Australian Law Reform Commission, 177, 258
 client legal privilege and, 114
 Australian Privacy Principles, 108
 Australian Pro Bono Centre, 43
 climate change and, 328
 National Pro Bono Target, 43
 Australian Royal Commission into Institutional
 Responses to Child Sexual Abuse, 199
 Australian Special Forces Lawyers in
 Afghanistan, 323–4
 Australian Wild Law Judgements Project, 343
 AWB, 115–16, 290
 rationalisation and, 296–9
 barristers, 60–1
 disbursements, 273–4
 billing
 access to justice and, 258
 billable hours system, 252, 263
 as mechanism of management control, 253

- billing (*cont.*)
 professional development skills and, 253
 costs agreements. *See* costs agreements
 fixed fee or lump sum arrangements, 259–60
 item remuneration billing, 251–2
 time-based billing, 252–6
 value-based billing, 260
See also lawyers' fees and costs; methods for charging for legal services
 Boyle, Richard, 133, 135, 159
 bullying, 4–5
 adversarialism and, 173
 contract negotiations and, 204
- cab rank rule, 13, 33, 61, 157–8
 capital punishment cases, 166
 Chan, Andrew, 166
 Chancelry Lane Project
 Net Zero Toolkit, 342
 child sexual abuse
 Catholic Church and lawyers, 199–201
 Chinese Walls, 222
 civil dispute resolution
 client's best interests and, 170
 ethics of care for lawyers in negotiation and mediation, 202–7
 harms associated with lack of care and competence, 174–5
 harms of excessive adversarialism, 171–4
 law of lawyering for fair civil process, 175–7
 fairness, 184–92
 honesty, 181–4
 overarching obligations in civil litigation, 177–80
 moral activism, 170–1
 conversations lawyers need to have with their clients, 198–202
 need for lawyer competency in, 193–8
 reasons why lawyers may fail to act competently or diligently, 174–5
 responsible lawyering and, 170
 tensions in, 169–70
 class actions, 187
 Clayton Utz, 32, 33, 113, 123, 289, 292
 client–client conflicts
 adversarial advocacy and, 241
 current client conflicts, 222, 223–30
 'actual' conflict arising while acting for two or more clients, 227–8
 client consent to conflict of interest, 226
 confidential information, 226–7
 'lawyer of choice', 228
 practitioner's duty to avoid conflicts of interest, 223–4
 current clients
 large law firms, 230
 small law firms, 228–9
 former client conflicts, 222
 client legal privilege, 102, 107, 109–16
 Australian Law Reform Commission and, 114
 collateral principles, 110–11
 dominant purpose test, 110–11
 client loyalty
 alternative ethical approaches to, 241
 ethics of care, 244–5
 moral activism, 243–4
 responsible lawyer, 242
 ideal of adversarial advocacy and, 241
 clients
 communication of advice and client instructions, 196–8
 perjury of, 181–2
 climate change
 climate change litigation, 187
 corporate disinformation campaign, 336–7
 international law reform, 342–3
 climate change and lawyers' ethics, 327–8
 adversarial advocacy, 335–9
 ethics of care, 339–40
 law reform, 342–3
 lawyers rethinking 'law', 343–4
 reform of legal ethics rules, 340–2
 moral activism, 328–31
 climate litigation in the 'Global South', 331
 strategic litigation, 329
 three waves of climate litigation, 329
 responsible lawyering
 moral counselling and sustainable business models, 334
 sustainable development and law, 332–4
 climate conscious lawyering, 333
 personal ethical approaches to, 333
 cloud computing
 ethical issues, 109
 cognitive dissonance, 293–4
 collaborative lawyering, 205
 collaborative practice, 205, 206, 207
 Collaery, Bernard, 133–5, 159
 communication
 consumer complaints and, 7
 of advice and client instructions, 196–8
 with clients to avoid misunderstandings and disputes, 277–8
 competition regulation
 legal profession and, 68–9
 complaints and discipline, 85–90
 Allison test, 85

- dealing with a complaint and disciplinary tribunals, 91–2
 - 'consumer' matters, 91
 - 'disciplinary' matters, 91
 - Legal Services Commissioners, 92
 - South Australia and Territories, 91–2
- 'gross negligence' sanction, 85–6
- mandatory reporting by lawyers, 95–6
- overcharging, 86
- regulation of solicitor trustee duties, 94–5
- sanctions for professional misconduct, 87
- conditional costs agreements, 256–7
- confidentiality
 - absolute nature of, 117–18
 - client legal privilege, 102, 107, 109–16
 - consequences for disclosure of confidential information, 105–6
 - distinction between privilege, 102–3
 - 'iniquity rule' defence to breach of confidence, 123–4
 - International Bar Association guidance on, 119, 122–3
 - lawyers' obligations of, 102–6
 - maintaining in an interconnected world, 106–9
 - 'moderate' confidentiality, 122
 - public interest exceptions to, 117–26
 - avoiding serious criminal offences and physical harm, 121–2, 123
 - rationale for, 101–2
 - pledge of silence, 101
 - respect for individual autonomy over personal information, 101
 - respect for the secrets of intimates, 101
 - strength of professional confidentiality, 101
- conflict of interest, 45, 211, 212
 - client consent to, 226
 - financial conflict of interest, 218–19
 - practitioner's duty to avoid, 223–4
 - whistleblowers and, 132
- consequentialism, 20, 31, 347
- consumer protection
 - costs disclosure and, 182
- contingent fee arrangements, 257–8
- convenience pleas, 143–4
- Corby, Schapelle, 105–6
- corporate clients
 - obligations of, 178
- corporate ethics
 - environmental, social and governance concerns, 307–8, 334
- corporate lawyers, 284–5
 - adversarial advocacy and, 299–300
 - commercial immersion of corporate lawyering, 291–2
 - competitive, high-stress environments, 293
 - incorporation of law firms and, 311
 - large law firm bureaucratic management and, 311
 - legal ethics and business ethics, 305
 - building ethics into law firms, 309–19
 - ethics programs and other internal controls, 313
 - framing the problem to include ethical values, 306–9
 - identifying the client correctly, 305–6
 - proactive corporate lawyering, 287
 - abusing lawyer–client confidentiality to cover up misconduct and obscure justice, 289–91
 - 'litigation option', 288
 - regulatory entrepreneurship, 288–9
 - rationalising unethical behaviour, 293–9
 - cognitive dissonance, 293–4
 - reactive corporate lawyering, 285–7
 - responsible lawyering and, 39–40
- corporate lawyers as corporate citizens
 - adversarial advocacy and responsible lawyering, 299–300
- corporate lawyer as responsible lawyer, 300–1
 - duty to the corporation as a whole, 303
 - duty to the law, 301–3
 - taking active responsibility, 303–5
- costs. *See* lawyers' fees and costs
- costs agreements
 - challenging, 274
 - negotiating fair and reasonable, 277
 - communicating with clients to avoid misunderstandings and disputes, 277–8
 - principles relating to costs agreements and getting paid, 272–7
- court orders
 - reasonable costs, 268
 - standard or ordinary costs, 268
- COVID-19
 - legal technology and, 4
 - mental illness and, 4
 - virtual hearings and, 195
- criminal advocacy, 162–3
- criminal justice system
 - adversarial advocacy and, 138
 - global ethics and, 163–6
 - maintenance of integrity of, 138
 - role of defence lawyer in, 138, 139
 - role of prosecutor in, 138–9
 - 'trauma-informed practice' and, 140

- criminal trial defence
 defending the 'guilty' client, 144–8
 independence and integrity of advocates, 152–8
 managing pleas of 'guilty' and 'not guilty', 140–4
 convenience pleas, 143–4
 tactics in running a defence, 149
 jury nullification, 151
 over-zealous conduct, 149
 stereotypes, 151–2
 under-zealous conduct, 149–50
 'win at all costs' tactics, 150–1
- criminal trial prosecution, 158–62
 balanced prosecution process and, 161
- cyber attacks
 law firms and, 108
 cybersecurity, 108–9
- dispute resolution
 relationship preservation and, 49–50
 doctrine of advocates' immunity, 193
 dominant purpose test, 110–11
 duty to the court, 30, 34, 40, 104, 114, 145, 149, 177
 corporate lawyers, 285
- Earth jurisprudence, 6, 343–4
- Eccleston Report, 200
- environmental activism
 civil disobedience and, 335
- Equity Generation Lawyers, 329–30
- ethical decision-making, 22–3
 application of ethical standards or principles, 23
 awareness of ethical issues, 23
 Giving Voice to Values approach, 24
 moral imagination and practical implementation, 24
- ethical lawyering, approaches to, 28–31
 adversarial advocacy. *See* adversarial advocacy
 ethics of care. *See* ethics of care
 moral activism. *See* moral activism
 responsible lawyering. *See* responsible lawyering
- ethical questions, 13
- ethical standards and principles in legal practice
 care for people and relationships in daily work, 20
 ethical issues and lawyer–client relationship, 19
 ethics determined by lawyers' social role, 19
 lawyers' obligations towards justice, 19–20
- ethics, 13
 adversarial advocacy as traditional concept of legal ethics, 31–4
 being explicit about, 52–4
 climate change and lawyers' ethics. *See* climate change and lawyers' ethics
 corporate ethics
 environmental, social and governance concerns, 307–8, 334
 ethics awareness process, 353
 global ethics and criminal justice, 163–6
 personal ethics, 14, 58
 social ethics, 16
 virtue ethics, 17, 31
- ethics of care, 2, 17, 28, 41, 52, 198, 205, 207
 alternative ethical approach to client loyalty and, 244–5
 appropriate dispute resolution and relationship preservation, 49–50
 as female ethics, 46
 climate change and, 339–40
 confidentiality and, 120
 dialogue and participation, 48–9
 empowerment models, 50–1
 focus on client's best interest, 50
 for lawyers in negotiation and mediation, 202–7
 holistic understanding of law and clients, 48
 multidisciplinary practices, 51
 relational lawyering, 45–8
 restorative practice, 51
 whistleblowing and, 126
- excessive adversarialism, 2, 35
 harms of, 171–4
- Exxon Mobil Corporation
 climate change disinformation campaign, 336–7
- false or misleading statements to the other side, 204
- First Nations Peoples
 legal systems, 343
 native title claims, 187
 relationship with justice system, 6
 sources of ethics and, 6
- 'fit and proper' person, 78, 79–80, 81
 'fitness test', 84–5
- fixed fee or lump sum arrangements, 259–60
- gender diversity, 5
- General Counsel Oath, 285
- general morality, 16–18, 31
 application to legal practice, 17–18

- deontological theories, 16
 - Kant's 'categorical imperative', 16
 - teleological theories, 16–17
- genocide, 165
- Giuliani, Rudy, 181
- Giving Voice to Values approach, 24
- Gobbo, Nicola, 125, 153
- 'good fame and character', 78, 79
- government lawyers, 321–4
 - ethical pressure and, 323
 - model litigants, 180
 - responsible lawyering and, 322
- Guantanamo Bay, 164

- holistic lawyering, 48

- illegal conduct
 - lawyers' assistance in, 126–7
- incorporated legal practices, 311
 - ten commandments for management systems of, 311–12
- information barriers, 212, 222, 226–7, 228–9
 - former clients and, 230–1
 - confidential information exceptions, 231
 - test in *Bolkiah's* case, 230–1
 - impenetrable walls or potentially porous inventions, 232–5
 - scepticism of courts about, 233
- International Bar Association
 - International Principles on Conduct for the Legal Profession*, 119, 122–3
- item remuneration billing, 251–2
 - court scales of costs, 251–2

- James Hardie Industries, 286
 - attempts to avoid asbestos liability, 314–19
- jury nullification, 151
- justice system
 - relationship with First Nations Peoples, 6

- Kantianism, 20, 31, 37, 347
- Keim, Stephen, 124

- Law Council of Australia, 74, 96, 108, 128, 164
 - Climate Change Policy Statement, 331, 334, 342
 - Policy on Sustainable Development, 332
- law of lawyering, 15, 35, 59
 - for fair civil process, 175–7
 - fairness, 184–92
 - honesty, 181–4
 - overarching obligations in civil litigation, 177–80
 - lawyer–client conflict, 214–22
 - adversarial advocacy and, 241
 - financial conflicts of interest, 218–19
 - friends and family relationships, 220–1
 - lawyer's concerns and interests, 221
 - lawyer's relationships to other lawyers and judges, 219–20
 - pressure on client to pay unreasonable fees or provide other benefits, 214–16
 - sexual relationship between lawyer and client, 220
 - lawyer–client relationship
 - ethics of care and, 48–9
 - lawyer honesty
 - client perjury and, 181–2
 - informing the court of binding legal authority, 182
 - lawyers may not assist a client in fraudulent or criminal conduct, 338
 - lawyers may not make false statements in public, 337
 - norms of professionalism, 338–9
 - not misleading the court, 181–4
 - obligation to disclose factual information to the court, 182
 - tactical threats to avoid litigation and, 188
 - lawyer's obligation of loyalty, 211–12, 214, 236
 - responsible lawyering and, 242
- lawyers
 - mandatory reporting to external bodies by, 95–6, 127
 - role of, 10–14
- lawyers' fees and costs, 248
 - access to justice and, 249
 - adversarial advocacy and, 249
 - curbing billing excesses and providing guidance to the profession, 269–70
 - costs disclosure and consumer protection, 270–2
 - principles relating to costs agreements and getting paid, 272–7
 - disputing lawyers' costs, 278–81
 - cost assessment process, 281
 - fair and reasonable legal costs, 275–6
 - imbalance of power between lawyer and client, 248–9
 - item remuneration billing
 - court scales of costs, 251–2
 - methods for charging for legal services. *See* methods for charging for legal services
 - negotiating fair and reasonable costs agreements, 277
 - communicating with clients to avoid misunderstandings and disputes, 277–8

- lawyers' fees and costs (*cont.*)
 overcharging, 86, 254
 uplift fee, 258–9
 wider ethical problems with fees and billing practices
 costs of time-based billing within firms, 263–6
 legal fees diminishing access to justice in courts, 267–9
- Legal Profession Model Laws Project Model Provisions*, 74–5
- legal profession regulatory structures
 barristers, 60–1
 competition regulation and the legal profession as a business
 legal profession as a conspiracy against the laity, 68–9
 regulation of the legal profession as a business, 69–72
 independent authorities, 60
 professional communities, 60
 regulation of the legal profession today. *See* regulation of the legal profession today
 self-regulation through social trustee professionalism, 62–5
 burden of self-regulation, 70–2
 critiques of self-regulation, 69–70
 justifications for, 64–5
 public interest and, 63
 solicitors, 61–2
- legal professional privilege. *See* client legal privilege
- legal professionalism
 measuring awareness of ethical preference, 352–5
 significance of personal values in, 348–50
 wellbeing and values and, 351–2
- Legal Services Commissioners, 76, 91, 92
- legal technology
 COVID-19 and, 4
 definition of 'practising law' and, 67
 virtual hearings and, 195–6
- legalism, 15
- litigation processes
 defence for an ulterior purpose and, 186–7
 responsible use of, 189–90
 unfair uses of, 184
- 'litigotiation', 172, 203
- lump sum or fixed fee arrangements, 259–60
- Mabo* case, 187
- McBride, David, 133, 135, 159
- McCabe* case, 11, 32–3, 289, 290, 291–2
- mediation, 207
- mental illness, 4
- methods for charging for legal services, 250
 alternative fee arrangements
 lump sum or fixed fee arrangements, 259–60
 value-based billing, 260
 conditional costs agreements, 256–7
 contingent fee arrangements, 257–8
 item remuneration billing, 251–2
 time-based billing, 249, 250, 252–6
 charging for non-legal costs, 276
 criticisms of, 253
 international overbilling and, 264–5
 overcharging and, 254
 pressure over, 263–4
 uplift fee, 258–9,
See also billing
- model litigants
 corporations, 180
 government lawyers, 180
- money laundering, 127–8
- monopoly of practice, 65–7
 'engage in legal practice' definition, 67
- moral activism, 2, 28, 52, 207, 303, 333, 347
 agents for justice with clients and the law, 41–5
 alternative ethical approaches to client loyalty and, 243–4
 civil dispute resolution and, 170–1
 climate change and, 328–31
 climate litigation in the 'Global South', 331
 strategic litigation, 329
 three waves of climate litigation, 329
- confidentiality and, 119
- conversations lawyers need to have with their clients, 198–202
- definition, 41
- lawyers' role in a pluralist democracy and, 44–5
 whistleblowing and, 126, 132
- moral judgement
 artificial intelligence and, 52–3
- moral rationalisation, 294–5, 296
- negotiation, 202
- no-win, no-fee, 250
- Office of the Director of Public Prosecutions (NSW)
 guidelines for prosecutors, 141–2
- personal ethics, 14, 58
- personal values
 significance of in legal professionalism, 348–50

- Porter, Christian, 237–8
- privilege
- absolute nature of, 117–18
 - confidential communications not covered by, 111–12
 - distinction between confidentiality, 102–3
 - information and, 222
- pro bono, 42–3
- professional conduct, 15
- professional misconduct, sanctions for, 87
- profits or commissions, 218
- Queensland Law Society, 70–1
- rationalisation
- adversarial advocacy and, 295
 - common rationalisations for illegal and unethical conduct, 295
 - definition, 294
 - moral rationalisation, 294–5, 296
 - situational factors and, 296
 - unconscious and, 296
- recklessness, 190–1
- regulation of the legal profession today, 72–3
- admission and certification, 78–85
 - complaints and discipline. *See* complaints and discipline
 - towards a national approach to setting standards and values, 73–4
 - Model Laws and Uniform Laws* project, 73, 74–6
 - national ethical values, 77–8
- relationship of loyalty, 211, 213
- administration of justice and, 235–40
 - adversarial advocacy and, 212
 - balancing competing relationships in, 222–3
 - client loyalty and the ideal of adversarial advocacy, 241
 - conflicting with the administration of justice, 235–40
 - current clients, 223–30
 - former clients and information barriers, 230–5
 - for each client, 211
 - lawyer–client conflict, 214–22
 - responsible lawyering and, 212
- responsible lawyering, 2, 28, 29, 30, 52, 193, 198, 205, 207, 208, 236, 333, 347
- alternative ethical approach to client loyalty and, 242
 - civil dispute resolution and, 51
 - confidentiality and, 119
 - corporate lawyers and, 39–40, 300–1
 - government lawyers and, 322
 - independence of, 191
 - justification for, 37
 - lawyer's obligation of loyalty and, 242
 - officer of the court and trustee of the legal system, 36–41
 - relationship of lawyering and, 212
 - whistleblowing and, 126, 132
- restorative justice
- environmental offending and, 340
- restorative practice, 51
- Rio Tinto
- destruction of Juukan Gorge rock shelters, 309
- Rowling, JK, 106
- Royal Commission into Institutional Responses to Child Sexual Abuse, 199
- Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, 292
- rule of law, 165
- adversarial advocacy and, 36
 - challenge to by social breakdown, 327
- Securities Exchange Commission, 127
- self-determination theory, 351
- self-regulation, critiques of, 69–70
- sentencing
- prosecutors and, 161
- sexual harassment, 4–5
- social ethics, 16
- solicitor trustee duties, regulation of, 94–5
- solicitors, 61–2
- Sukumaran, Myuran, 166
- sustainable development, 332–4
- climate conscious lawyering, 333
 - personal ethical approaches to, 333
- Tampa* case, 43–4, 188
- Tasmanian Law Society, 71
- therapeutic jurisprudence, 48, 140
- time-based billing, 249, 250, 252–6
- charging for non-legal costs, 276
 - costs of within law firms, 263–6
 - criticisms of, 253
 - inaccuracy and, 254
 - intentional overbilling and, 264–5
 - no-win, no-fee, 250
 - overcharging and, 254
 - pressure over, 263–4
- trust accounts, 94–5

- Uluru Statement From The Heart, 6
- unlawful enemy combatants, 164
- uplift fee, 258–9
- US Department of Justice
 - Trump presidency lawyers, 321–2
- value-based billing, 260
- Van, Nguyen Tuong, 347
- victims of crime, 140
- virtual hearings
 - appropriate conduct in, 196
 - technology and, 195–6
- virtue ethics, 17, 31
- wellbeing
 - legal professionalism and, 351–2
 - professional wellbeing, 4
- whistleblowers, 132
 - prosecution of, 159
- whistleblowing, 126–35
 - Australian Solicitors' Conduct Rules 2015* and, 121
 - by lawyers
 - corporate whistleblowing, 130–2
 - elements to be considered, 128–9
 - process to be followed, 129–30
 - protection for, 132–3
 - public sector lawyers, 132
 - corporate lawyers and, 307
 - nature of the wrongdoing and, 129
- wills and estates matters, 216–18, 259
- witness intermediaries, 151
- Witness K, 133–5, 159
- work–life balance, 293