



Law Council
OF AUSTRALIA

Commonwealth Law Conference 2024 – Opening Remarks

**Speech delivered by Mr Greg McIntyre SC, Law Council of Australia
President, at the Commonwealth Law Conference, Melbourne**

23 February 2024

Good morning.

Since UNESCO declared 2019 the Year of Indigenous languages and followed that up by declaring this the decade of Indigenous languages, it has been my practice to acknowledge country in the Noongar language, the language of my home town *Boorloo*, or Perth, Western Australia, in words taught to me by Professor Len Collard, A Whadjuk Noongar traditional owner:

Kaia

Nyuny Kaditj Ngulluck Nyinniny

Wurundjeri Woi-wurrung Bunurong Boon Wurrung Kulini Boodja

Nguny burruniny quop kaditj kanya

Nitja baarl birrdiya baarl boodjah

Koora yeye Borrrdahwan

Kaia.

The program today is full of interesting, important and timely topics and our discussions will be led by experts in their fields.

In addition to some important practical sessions on statutory interpretation, running class actions or defending appeals you will be grappling with some of the most significant issues that will impact the legal profession in the coming years, and the bodies which represent it.

Climate change, for example, has posed novel and complex challenges with respect to the development, understanding and practice of the law and prompted legal practices to adapt at a structural level.

Artificial intelligence has the potential to deliver significant opportunities and benefits across the economy and our society more broadly. It has already begun to drive disruption and innovation in the practice of law. It also creating a number of risks which must be addressed head on.

Thank you to all the speakers who are with us today and lending us their insights on these important topics.

I would particularly like to acknowledge:

- The Hon Chief Justice Debra Mortimer, Federal Court of Australia, who will be delivering the First Address this morning;
- The Hon Justice Catherine Button, Federal Court of Australia;
- The Hon Justice Emiliios Kyrou AO, President, Administrative Appeals Tribunal (AAT);
- The Hon Justice John Dixon, Former Judge, Supreme Court of Victoria;
- The Hon Paul Brereton AM RFD SC, Commissioner, National Anti-Corruption Commission (NACC);
- Professor Julian Webb of Melbourne University Law School;
- Ms Jennie Pakula, Victorian Legal Services Board and Commissioner;
- Ms Marita Hogan of the Australian Securities and Investments Commission;

- Ms Georgina Schoff KC, President of the Victorian Bar, and all the Bar Members joining us today;
- And Mr Peter Woulfe, and the Executive of the Federal Dispute Resolution Section who have worked so hard to bring you this conference today.

Last year was the 90th Anniversary of the Law Council of Australia. In recognition of that milestone, Dr Gordon Hughes released the second edition of *'The Law Council of Australia: The People, The Profession and The Institutions'*.

In his opening of the chapter entitled 'Courts and Tribunals' Dr Hughes wrote: "The courts lie at the heart of Australia's legal system, and the LCA's interest in and involvement with the courts is manifested in diverse ways."

The community's need for our courts, our demands on them, and our expectations of them has not diminished. It continues to grow every year. The community often underestimates the complexity and volume of matters which are before the courts.

Noting the pressures faced by our federal courts and tribunals, the Law Council made appropriate resourcing of these vital institutions a key recommendation in our recent Pre-Budget wish list, which we provided to the Commonwealth Government last month.

Courts and tribunals have undertaken to increase efficiency and achieve administrative savings, but these measures alone are not sufficient to address the current backlogs and high workloads that continue to affect them.

The Law Council remains of the view that the capacity of the federal courts to resolve matters both swiftly and fairly is being hindered by insufficient resourcing in the face of a broadening demand for their services.

Additional funding is necessary for the federal courts to efficiently process disputes and provide a fair outcome to participants.

In the Law Council's view, this must include funding to support the appointment of additional judges over and above current levels, providing adequate resources for registries, improving relevant technology and infrastructure, and improving services in rural, regional and remote areas.

As of course you will all be aware, the Administrative Appeals Tribunal will be replaced with the new Administrative Review Tribunal.

In December 2022, when this transition was first announced, we established an internal Working Group, with the assistance of our Constituent Bodies, to inform our views on the reform measures.

Led by that Working Group, chaired by Peter Woulfe, we have been engaging closely with the Government on development of the Administrative Review Tribunal.

Our Working Group met several times early last year and in April, the Attorney-General's Department, released a comprehensive issues paper with 67 questions on what the new body should look like, how it should operate, and the ways it should or should not differ from the current AAT.

Consulting with our Constituent Bodies and our Working Group, and drawing on previous submissions we had made relating to the AAT, meant we were well placed to thoughtfully respond to every one of the questions in the issues paper.

A Taskforce in the Attorney-General's Department was developing the Bills for much of last year, and we, along with key members of our working group, were fortunate to meet with Attorney-General's Department several times to get some insights into the reform process and to feed in our preliminary views and ideas. We appreciate the consultative approach adopted by the Government in developing these Bills.

Three bills related to establishment of the ART have been introduced to Parliament. Earlier this month, we made a submission regarding the first two bills.

While the ART will be similar in many ways to the AAT, the Bills have a lot of positive features which we think improve upon the current model, including:

- A transparent and merit-based appointment process;
- A simple membership structure with clear roles and responsibilities for each position;
- Powers for the ART President to manage the performance and conduct of members and to respond flexibly to changing caseloads; and
- A guidance and appeals panel, which will enable the escalation of systemic issues for second tier review and increase consistency in significant ART decisions.

The Bills will also re-establish the Administrative Review Council, which will play an important function of monitoring the integrity of the administrative review system, inquiring into systemic issues and overseeing education and training for Commonwealth officials. This is something that the Law Council has repeatedly called for.

Our submission to Government is, on the whole, positive about the reforms, but it does make a range of recommendations where we consider there is scope to refine, or better justify, the approach taken in the Bills. Some of our key recommendations include:

- that there should be an independent review of the Bills to be conducted after three to five years;
- that all senior members must be legally qualified and enrolled for at least 7 years;
- that the Attorney-General must be required to establish an assessment panel to assess candidates for appointment to ART;
- that timeframes and procedures should be harmonised to a much greater extent for migration matters. On migration matters more generally, we see the reform process as something of a missed opportunity in some respects and remain concerned by the proposed continuation of a codified natural justice procedure. We do, however applaud steps to abolish the Immigration Assessment Authority, meaning that previously fast-tracked applicants will have their matters reviewed in the same way as any other protection visa applicant.

In keeping with what I have said earlier, we must also ensure this body is sustainably resourced.

We have also called on the Australian Government to ensure that the related services that will support those who engage with the ART are adequately funded. These services include publicly funded legal representation and advice so that the ART can ensure an applicant's right to representation in practice, and access to litigation guardians when help navigating the system is required.

Clause 68 of the ART Bill enables the Tribunal to appoint interpreters for purposes of communication between persons and Tribunal—in fact, clause 68 would require the appointment of an interpreter where a person is not sufficiently proficient in English to effectively communicate with the Tribunal.

This provision is welcome. However, it is likely to increase demand for interpreters. Noting existing difficulties in ensuring an appropriate, professional, skilled supply of justice interpreters, it is imperative that governments come together to invest in these vital services.

When assessing policy and other government decisions, our advice is heavily informed by consideration of whether the legislation or action complies with rule of law principles.

A key rule of law principle held by the Law Council is that everyone should have access to competent and independent legal advice and that the state should provide adequate resources to guarantee access to a competent and independent lawyer in circumstances where individuals do not have the independent means to retain a lawyer.

Unfortunately, we know this is not the reality for many Australians.

Having spent much of my early career working at Aboriginal and Torres Strait Islander Legal Services across Western Australian and northern Queensland and as Chair of Law Access in Western Australia, I am acutely aware of the importance of legal assistance services, and what they can do to improve the lives of individuals and the broader impact that they can have for our communities.

Enabling people to access legal assistance to help resolve issues—such as family law disputes or accommodation difficulties—to remove themselves from harm, or to enforce their financial or employment rights does not just help them as individuals, but creates downstream savings in areas such as health and housing.

A review of the National Legal Assistance Partnership is currently in its final stages and we look forward to its recommendations in the coming months. But in our view, there is no denying that the current level of Commonwealth funding is, at best, half of what is needed to enable legal assistance services to meet demand.

Among our core concerns, the amounts payable for legal aid grants mean that too often it is simply unviable for many in the private profession to take on this work.

Thank you all for joining us to take part in this outstanding programme and I hope you enjoy today as much as I know I will.

Disclaimer:

This document remains the property of the Law Council of Australia and should not be reproduced without permission. Please contact the Law Council to arrange a copy of this speech.