Law Council
OF AUSTRALIA

Business Law Section

Aviation Consumer Protection Bill 2026

Senate Standing Committee on Rural and Regional Affairs and Transport

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Telephone +61 2 6246 3788
Email mail@lawcouncil.au
PO Box 5350, Braddon ACT 2612
Level 1, MODE3, 24 Lonsdale Street,
Braddon ACT 2612
Law Council of Australia Limited ABN 85 005 260 622
www.lawcouncil.au

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Executive summary

1. The Competition and Consumer Committee of the Business Law Section of the Law Council of Australia (the **Committee**) makes this submission to the Senate Standing Committee on Rural and Regional Affairs and Transport (the **Senate Committee**) in relation to the Aviation Consumer Protection Bill 2026 (the **Bill**), the Aviation Consumer Protection (Consequential Amendments and Transitional Provisions) Bill 2026 (the **Consequential Bill**), the Aviation Consumer Protection Levy Bill 2026 (the **Levy Bill**), and the Aviation Consumer Protection Levy (Collection) Bill 2026 (the **Collection Bill**) (collectively, the **legislative package**).

2. The Committee supports the Australian Government's objective of ensuring a safe, competitive, and sustainable aviation sector that delivers fair outcomes for consumers. However, the Committee has identified a number of areas where the legislative package could be strengthened to better achieve these aims, as summarised below.

   (a) **Delegation of Substantive Content:** The Bill delegates all substantive consumer protections to the Aviation Consumer Protections Charter and Standards, limiting parliamentary oversight of the framework's core content. This includes passenger entitlements, standards of treatment, accessibility requirements, and complaint handling obligations. The Committee recommends that core consumer protections be prescribed in primary legislation.

   (b) **Aviation Consumer Protections Charter (the Charter):** As the centrepiece of the proposed framework, the Charter is absent from the legislative package, preventing Parliament from assessing the adequacy of the protections the framework is intended to deliver. The Committee recommends that a draft Charter with minimum mandatory content be made available for consultation.

   (c) **Scope of Protections:** The framework contains a number of gaps that risk leaving consumers without the protections it is designed to provide, including broad exemption powers, the exclusion of services not directly paid for by consumers, limited coverage of third-party intermediaries, and the exclusion of charter operations. The Committee recommends that the scope be reviewed to address these gaps.

   (d) **Consumer Redress Mechanisms:** The proposed framework creates no new private causes of action, and the Aviation Consumer Ombudsperson's (the **ACO**) determinations are binding on scheme members but not on complainants, with no express provision for monetary compensation. The Committee recommends that the adequacy of individual redress mechanisms be reconsidered.

   (e) **Regulatory Complexity:** The framework introduces multiple institutional actors with overlapping responsibilities, alongside existing regulators with concurrent jurisdiction, which risks creating confusion for both consumers and regulated entities. The Committee recommends that consolidated, plain-language

guidance on consumer entitlements and complaint pathways be published once the Charter and Standards are in force.

(f) **Civil Penalty Framework:** The Bill imposes significant civil penalties for breach of Charter requirements and Standards whose content has not yet been determined. The Committee recommends that the Charter and Standards be finalised and subject to public consultation before the civil penalty provisions come into force.

(g) **Accessibility and Children's Rights:** The Bill identifies accessibility and children's rights as statutory objects but provides no guarantee that the Charter or Standards will address them. The Committee recommends that accessibility standards and protections for children, including unaccompanied minors, be mandatory requirements under the Charter.

3. The Committee's specific observations and recommendations in support of each of these points are set out in the submission below.

Submission

Introduction

4. Aviation plays a critical role in connecting Australians domestically and internationally, supporting economic activity, trade and social cohesion. The Committee supports the Australian Government's objective that the aviation sector is safe, competitive, productive and sustainable, and that it delivers reliable and fair outcomes for consumers.

5. This submission focuses on:

- the stated objectives of the legislative package and whether the proposed legislative architecture is likely to deliver those objectives;
- the Committee's specific concerns in relation to the proposed framework, including gaps in scope, consumer redress mechanisms, regulatory complexity, the delegation of substantive consumer protections to delegated legislation, and the civil penalty framework.

6. The Committee offers a number of observations and recommendations directed at strengthening the framework's capacity to achieve its stated aims.

Stated objectives of the legislative package

Policy context and background

7. Concerns about the adequacy of aviation consumer protections have been raised over an extended period. The 2009 National Aviation Policy White Paper, 'Flight Path to the Future', led to the establishment of an Airline Customer Advocate in 2012, reflecting an expectation that industry would develop an independent mechanism to assist consumers with unresolved complaints. At that time, the Government

indicated it would monitor industry performance and consider more interventionist options if necessary.

8. The Government subsequently undertook extensive consultation to inform a long-term vision for the aviation sector, including consultation on the terms of reference for the Aviation White Paper in early 2023, the release of the 'Aviation Green Paper: Towards 2050' on 7 September 2023, and the release of the 'Aviation White Paper: Towards 2050' on 26 August 2024 (the **2024 AWP**).

9. The 2024 AWP concluded that the industry-led Airline Customer Advocate had not delivered an effective or trusted complaint resolution mechanism, and that government intervention was warranted to strengthen consumer protections. This assessment was reinforced by a sustained increase in aviation-related consumer complaints following the COVID-19 pandemic. Research published by the Bureau of Infrastructure and Transport Research Economics (**BITRE**) indicated that airline performance remained below long-term expectations, with elevated rates of delays and cancellations.

10. A further consultation process was undertaken through the release of the 'Aviation Consumer Protections Consultation Paper' on 8 September 2025, which sought views on the scope and content of a statutory Aviation Consumer Protections Charter, the roles of a regulator and independent ombuds function, compliance, monitoring and enforcement mechanisms, and accessibility outcomes for passengers with disability or reduced mobility.

11. This context, and the significant political, media and regulatory scrutiny that surrounded it, underpins the importance of getting the proposed legislative package right, and in particular, that it delivers the clarity and outcomes for consumers that the Australian Government intends.

Statutory objects

12. Clause 3 of the Bill identifies six objects, of which the most significant for present purposes are: (a) protecting consumers of regulated services; (b) giving effect to Australia's obligations under the Convention on the Rights of Persons with Disabilities; (c) giving effect to obligations under the Convention on the Rights of the Child; and (d) facilitating the fair resolution of eligible complaints.

13. The Bill seeks to deliver these objectives through three principal mechanisms: the Charter, which sets minimum standards by legislative instrument; an Aviation Consumer Protection Authority (**ACPA**) for systemic monitoring, compliance and enforcement; and an Aviation Consumer Ombuds Scheme (the **Scheme**), operated by the ACO.

Whether the proposed framework delivers for consumers

Delegation of substantive content to delegated legislation

14. The Bill establishes only a high-level statutory framework and does not itself prescribe substantive consumer rights and obligations. Clause 20 of the Bill empowers the Minister to make the Charter and to determine additional requirements

in the form of Standards, both of which are legislative instruments. As a consequence, the substantive consumer protection regime is to be determined through delegated legislation. This includes passenger entitlements for disruptions, cancellations and missed connections, baggage handling and liability standards, refunds and compensation, accessibility requirements, and complaint handling processes.

15. The Committee recognises that there should be a process for making delegated legislation that balances the need for parliamentary oversight with the need for timely, effective governing, and generally supports the granting of powers to the Executive to make delegated legislation to support or implement the provisions of a particular Act. However, the Committee has significant concerns when that power extends beyond matters of detail or ancillary matters to the substantive aspects of a legislative scheme. Substantive consumer rights and obligations of the kind contemplated by the Bill should be prescribed in primary legislation, where they are subject to parliamentary scrutiny, open to stakeholder engagement and public debate, and amendable only through the deliberate action of Parliament, not left to instruments made and varied at the discretion of the Executive.

16. Established Parliamentary standards reinforce these points. The Senate Scrutiny of Bills Committee is concerned by bills which inappropriately delegate significant matters. It has 'significant scrutiny concerns with framework provisions, which contain only the broad principles of a legislative scheme and rely heavily on delegated legislation to determine the scope and operation of the scheme.'[1] It is disconcerting that the Bill does not meet this expectation.

17. The Law Council's Rule of Law Policy Principles further underline that Executive powers should be carefully defined by law, such that it is not left to the Executive to determine for itself what powers it has and when and how they may be used. In particular, where legislation allows for the Executive to issue subordinate legislation, the scope of that delegated authority should be confined and remain subject to parliament supervision.[2]

18. The Explanatory Memorandum states that it is 'necessary and appropriate' to set out the detailed requirements in the Charter and Standards, given the 'breadth, technical nature and variability of matters to be regulated', which it asserts require a level of detail and responsiveness 'not suitable for primary legislation'.[3] The Committee accepts that delegated legislation is appropriate for technical, administrative and operational matters that require flexibility and responsiveness to changing circumstances. However, consistent with the Committee's longstanding position, significant matters dealing with substantive policy issues should be included in primary legislation rather than delegated legislation.[4] Consumer entitlements, standards of treatment, accessibility protections and complaint handling obligations

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1 Senate Standing Committee for the Scrutiny of Bills, Committee Guidelines: Principle (iv): Inappropriate delegation of legislative powers.

2 Law Council of Australia, Policy Statement: Rule of Law Principles, March 2011, Principle 6.

3 Explanatory Memorandum, at [151].

4 Law Council of Australia, Submission to the Standing Committee for the Scrutiny of Delegated Legislation as part of its inquiry into the exemption of delegated legislation from parliamentary oversight (2 July 2020).

are substantive policy questions, not technical details, and they warrant parliamentary determination.

19. The concern is compounded by the layered delegation model established by subclause 20(2) of the Bill. Not only are substantive obligations set outside the primary legislation through the Charter, but their practical operation is further defined through Standards. Although framed as supplementary, the Standards carry the potential to determine the real content and effect of Charter requirements in practice. The cumulative result is a two-tiered structure in which the full extent of consumers' rights and regulated entities' obligations may be fixed and subsequently altered without any direct parliamentary engagement with the substance of those obligations.

20. This architecture also carries real risks of regulatory instability and uncertainty. Legislative instruments may be amended or replaced with limited public process and without parliamentary debate. Consumer protection frameworks derive their effectiveness in large part from clarity, consistency and the democratic legitimacy that primary legislation confers, none of which can be guaranteed where all substantive content is deferred to instruments subject to Executive revision.

21. The Committee notes that this approach reflects a broader trend towards addressing matters of policy and substance in delegated legislation rather than primary legislation, which carries a real cost to parliamentary accountability and highlights the need for robust scrutiny of such instruments. In a case such as this one, where the substantive content of a significant new consumer protection regime is deferred to future instruments, Parliament is asked to endorse a framework without being able to assess the adequacy, proportionality or scope of the obligations that framework will ultimately impose.

22. The Committee recommends that, at a minimum, core consumer entitlements and minimum standards be specified in the primary legislation, with the detailed, technical and operational requirements reserved for the Charter and Standards. This would establish a stable, democratically legitimate foundation for the framework, and would allow Parliament, consumers and regulated entities to assess the scope and adequacy of the protections being put in place.

The Charter is not before Parliament

23. Critically, the centrepiece of the framework—the Charter—is not before Parliament as part of this legislative package. The Bill does not prescribe any mandatory minimum content; clause 20(4) provides only non-exhaustive examples of matters that may be covered. There is no requirement that the Charter address any particular matter, nor that it do so within any specified timeframe. The Explanatory Memorandum describes this as 'necessary and appropriate given the breadth, technical nature and variability of matters to be regulated'.

24. The practical consequence is that Parliament is being asked to approve the architecture of a materially expanded industry specific consumer protection framework without being able to assess the adequacy of the protections themselves. Additionally, the Minister may determine further details of Charter requirements through Standards (clause 20(2)), creating a layered system of delegated legislation that may give rise to complexity and uncertainty. The Committee recommends that a

draft or exposure draft of the Charter be made available during the Senate Committee's inquiry, and that the Bill include minimum mandatory content requirements and a defined timeframe for the Charter's establishment.

Gaps in scope

25. The legislative package appears to include a number of 'gaps' or potential exclusions which may leave consumers without recourse to the very protections the framework is designed to provide, or at the very least may make it difficult for those consumers to navigate the framework. Particular instances are addressed below:

- The exemption framework established by clause 9 allows for class-based and individual exemptions from specified Bill provisions, Charter requirements or Standards for regulated entities.[5] The EM explains that smaller regional and remote airports, or particular categories of carriers in certain circumstances (e.g. facing operational or financial pressure), may warrant tailored treatment or exemption. Decisions in this regard are not subject to merits review. While the Committee recognises the stated need for flexibility in the framework and the intention that such decisions will be limited, there is a risk the application of the current exemption structure ultimately produces a complex outcome where consumers have non-uniform rights depending upon the airports they access and the carriers they choose to fly with.

- The definition of 'airport services' (clause 12) is limited to services paid for directly by a consumer. This potentially excludes many services—such as terminal facilities, security screening, wayfinding and aspects of the boarding process. While outside the current definition, these are services that consumers, particularly those with disabilities, experience as integral to their airport journey.

- The 'regulated entity' definition (clause 14) and attribution mechanism (clause 16) delineate those to whom the framework applies but there are gaps in relation to third-party service providers. For example, where a consumer pays a third party directly—such as a travel agent or online booking platform—the attribution mechanism in clause 16 does not apply. Given that a significant proportion of airline bookings are made through such intermediaries, this represents a material gap.

- While clause 15 seeks to address "who offers an airline service", in airline codeshare and interline arrangements, the practical allocation of responsibility between marketing and operating carriers may also be complex and uncertain, particularly in multi-sector itineraries involving foreign carriers. This again raises the risk of gaps in protections for particular consumers. The EM indicates that when the marketing carrier and the operating carrier are different airlines, the Charter requirements will be adapted to the circumstances required by the relevant minimum standards. This approach reinforces the importance of considering a draft or exposure draft of the Charter during the Senate

[5] See subclauses 9(1) and 9(2) of the Bill. Class based exemptions for regulated entities (subclause 9(1)) are contained in the rules, while individual exemptions for a specified regulated entity (subclause 9(2)) are made by the Minister by written instrument.

Committee's Inquiry, to consider whether the risk of gaps in consumer protection in this case is being appropriately mitigated.

- The definition of 'airline services' (clause 11) is limited to 'regular air transport', or services that operate according to fixed schedules and are available to the general public on a regular basis. The EM makes clear that services such as charter flights are not captured by this provision. While there are likely sound policy reasons, this does create a gap where charter operations accounted for close to 7% of Australian domestic commercial aviation in January 2026.[6]

26. The Committee recommends that the Senate Committee examine whether the proposed scope adequately captures the range of services that give rise to consumer detriment.

Limited redress for individual consumers

27. The proposed legislative package explicitly does not create new private causes of action. The only avenue for individual redress is through the ACO, whose determinations are binding on scheme members but not on complainants. Enforcement of a determination against a non-compliant scheme member depends upon the Minister seeking a performance injunction from the Federal Court.

28. The Bill does not contain express provision for the ACO to award monetary compensation, and does not prescribe minimum claim or remedy thresholds. In the analogous financial services context, the Australian Financial Complaints Authority framework is supported by private rights of action under the *Australian Securities and Investments Commission Act 2001 (Cth*). The absence of an equivalent mechanism in the aviation sector may limit the practical effectiveness of the proposed framework.

29. The Committee recommends that the Senate Committee examine whether the remedial and enforcement pathways are sufficient to deliver meaningful individual consumer redress, particularly given the regulatory complexity addressed below.

Regulatory complexity and risk of consumer confusion

30. The legislative package establishes or engages no fewer than four distinct institutional actors: the ACPA, the ACO, the Aircraft Noise Ombudsperson, and the Minister. These operate alongside existing regulators with concurrent or overlapping jurisdiction, including the ACCC, State and Territory fair trading bodies, and the Australian Human Rights Commission. The ACO may refer matters to these bodies, but the framework does not establish a single entry point or 'no wrong door' mechanism to assist consumers in navigating these distinctions.

31. A regulated entity seeking to understand its obligations will need to consult the Bill, the Charter, potentially multiple Standards, the rules, the ACO Scheme rules, any authorisation conditions, any regulatory requirements, and any applicable Ministerial directions. Similarly, consumers will need to navigate the Charter, the Standards, the Scheme rules, and the interaction with existing rights under the Australian Consumer Law and the *Civil Aviation (Carriers' Liability) Act 1959 (Cth)* (the **CACL Act**).

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[6] See BITRE, Domestic aviation activity: https://www.bitre.gov.au/statistics/aviation/domestic (accessed 22 April 2026)

32. For example, while it is intended the ACO will resolve individual complaints and the ACPA will respond to systemic and serious breaches of the minimum standards set out in the Charter, the ACO is not specifically addressing Charter-related individual complaints. Instead:

    - an 'eligible complaint' for the ACO (clause 17) is broadly defined to include "issues relating to the rights and entitlements of an individual consumer in relation to a regulated service", which would conceivably include contractual rights between airline / airports and consumers, in addition to Charter related issues and other matters; and

    - the ACO's determination power with respect to an 'eligible complaint' is whether a decision of a regulated entity "was fair and reasonable in all the circumstances" (clause 46).

33. It is possible that a regulated entity is compliant with the Charter in a particular case but still has its conduct found to be "unfair or unreasonable" by the ACO. Conversely, though perhaps less likely, conduct inconsistent with the Charter may or may not be found to be "unfair or unreasonable" by the ACO. This is bound to lead to uncertainty and frustration for both regulated entities and consumers.

34. The Committee recommends that the Bill require the publication of consolidated, plain-language guidance on consumer entitlements and pathways once the Charter and Standards are in force.

Enforcement and review rights

35. Division 4 of the Bill grants the Secretary, or an SES employee, significant powers under the *Regulatory Powers (Standard Provisions) Act 2014* (Cth) to seek civil penalties, issue infringement notices, accept enforceable undertakings and seek injunctions in relation to the civil penalty provisions of the Bill. The civil penalty provisions include compliance with the Charter and Standards which are yet to be determined under Part 2 of the Bill.

36. The significant powers granted effectively to ACPA for any contravention of the Charter or Standards underline the importance of a draft or exposure draft of the Charter and any proposed Standards being made available for comment during the Senate Committee's inquiry.

37. Separately, in determining complaints under Part 3 of the Bill, the ACO is to consider whether the decision or conduct was fair and reasonable in all the circumstances. There is no reference to the scheme member's compliance with the Charter or Standards, so it appears that this factor would be just one circumstance to be considered by the ACO, among all others, in making a determination. Further, the only mechanism to review a determination is to apply to the Federal Court and only on a point of law. This appears to be a narrow and relatively expensive review mechanism for the ACO against a decision of the ACPA.

Interaction with the CACL Act

38. Clause 8(2) provides that, to the extent of any inconsistency, the CACL Act prevails. This may constrain the practical scope of consumer protections achievable under the Charter, particularly in relation to delay, cancellation and baggage handling, which are also addressed under the CACL Act and the Montreal Convention. The Senate Committee may wish to consider whether the relationship between the two regimes has been clearly delineated.

Accessibility and children

39. The Committee welcomes the inclusion of accessibility and children's rights as specific statutory objects. However, as with general consumer protections, the delivery of these objectives is entirely dependent upon the content of the Charter and Standards. The Bill does not guarantee that accessibility standards or protections for children will be prescribed. The Committee recommends that mandatory accessibility standards be required in the Charter as a matter of course, and that sufficient legislative guidance be provided to ensure that the particular vulnerabilities of children—including unaccompanied minors—are addressed.

Civil penalties in the absence of a Charter

40. The concerns about the delegation of substantive content to legislative instruments, identified in the preceding section, are compounded by the interaction between clause 20 and the civil penalty framework established by the Bill. The Bill imposes a fully articulated penalty regime for breach of Charter requirements and Standards, notwithstanding that the Charter and Standards have not yet been made and their content remains entirely unknown. Subsection 19(1) provides that a regulated entity must comply with applicable Charter requirements and Standards, and subsection 19(2) expressly designates this as a civil penalty provision. The obligations for which regulated entities may face significant civil liability are thus defined entirely by instruments yet to be made.

41. The maximum pecuniary penalty for a body corporate is the greatest of: 30,300 penalty units; three times the value of the benefit obtained; or 30% of the adjusted turnover of the body corporate during the breach turnover period (defined in subsection 19(8) as the sum of the values of all supplies made or likely to be made by the body corporate and any related body corporate). These penalties are modelled on the *Competition and Consumer Act 2010* (Cth) and are among the most significant in Commonwealth regulatory legislation. The intended scope and operation of provisions attracting penalties of this magnitude must be unambiguous, and the obligations to which they attach must be sufficiently defined to enable regulated entities to understand what is required of them and the consequences of non-compliance.

42. The Bill further establishes a comprehensive enforcement framework in Part 5, Division 4, applying the civil penalty orders, infringement notices, enforceable undertakings and injunctions provisions of the *Regulatory Powers (Standard Provisions) Act 2014* (Cth). The Secretary is also separately empowered under Division 5 to issue improvement notices, with non-compliance attracting a civil penalty of 60 penalty units.

43. Parliament is being asked to enact this enforcement framework for obligations whose content is not yet known. Subsection 20(4), prefaced by the words 'without limiting', provides only illustrative examples of matters that may be the subject of Charter requirements and Standards. There is no prescriptive floor, no mandatory content requirement, and accordingly no basis upon which Parliament, regulated entities or the public can assess the proportionality of the penalty regime as enacted. Consistent with the Law Council's Rule of Law Principles, in particular Principle 3, laws and their associated penalties should be proportionate and not arbitrary in their operation. While the Explanatory Memorandum describes this as enabling 'detailed and technical requirements' to be outlined in delegated instruments, these matters are not merely technical or administrative, as discussed above, they are central to the regulatory framework.

44. At a more fundamental level, the rule of law requires that obligations be defined with sufficient clarity and certainty before regulated entities are expected to order their conduct accordingly, and before enforcement action may properly be taken. Regulated entities are entitled to know, at the time the civil penalty provisions take effect, precisely what they are required to do. The Bill as currently drafted functions as framework legislation, offering only a broad outline of the regulatory scheme and granting the Executive broad power to implement it through instruments yet to be made, without meaningful parliamentary oversight of the content or scope of those obligations. Laws must be clear and certain before their application to specific circumstances, and regulated entities are entitled to that certainty before facing penalties at the highest levels of Commonwealth civil penalty law.[7]

45. The Committee accordingly recommends that the Bill either incorporate minimum substantive obligations in the primary legislation, or require, at a minimum, that the Charter and Standards be made and be subject to meaningful public consultation before the civil penalty provisions in section 19 come into force.

[7] Law Council, Rule of Law Principles, Principles 1 and 6.

Recommendations

That the Senate Committee:

- **recommend that core consumer entitlements and minimum standards be specified in primary legislation, or at a minimum request that a draft or exposure draft of the Charter be made available and subject to meaningful public consultation;**
- **examine whether the remedial and enforcement pathways including the absence of private causes of action and limited individual enforcement mechanisms are sufficient to deliver meaningful consumer redress;**
- **consider whether the Bill should require publication of consolidated, plain-language guidance on consumer entitlements and a 'no wrong door' entry point for consumer complaints;**
- **examine whether the current scope adequately captures the range of services that give rise to consumer detriment, including airport services not directly paid for by consumers and services provided by travel agents and online booking platforms;**
- **consider whether the relationship between the Bill and the CACL Act has been clearly delineated; and**
- **consider whether mandatory accessibility standards and protections for children should be required in the Charter.**

About the Business Law Section

The Business Law Section of the Law Council of Australia provides a forum through which lawyers and others interested in all matters pertaining to business law can discuss current issues, debate and contribute to the process of law reform in Australia, and enhance their professional skills.

The Section:

- prepares more than half of the Law Council's submissions each year, putting the views of the business community and the legal profession directly to the Federal Government and its agencies, and Federal Parliamentary Committees;
- provides a forum for debate of current issues, and assists lawyers to develop and maintain their professional skills and knowledge, through a schedule of regular conferences, workshops and seminars;
- represents the Law Council on a number of bodies—for example, the National Taxation Liaison Group and its sub-committees, the Customs and Border Protection National Consultative Committee and its sub-committees and the ASX Corporate Governance Council; and
- gives its members the opportunity to develop a network of professional contacts in their fields of practice.

About the Law Council of Australia

The Law Council of Australia represents the legal profession at the national level; speaks on behalf of its constituent bodies on federal, national, and international issues; promotes and defends the rule of law; and promotes the administration of justice, access to justice, and general improvement of the law.

The Law Council's Secretariat is based in Canberra. Its website is www.lawcouncil.au.