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## Introduction

Welcome to the August-September 2010 issue of the Law Council's regular e-newsletter – @theLCA. This publication is designed to deliver timely and relevant information on a range of issues of interest to the Australian legal profession. Contributions to @theLCA are welcome. Please contact the editor for more information.

## President's message

By Glenn Ferguson

It has been a very busy month for the Law Council of Australia both nationally and internationally. As I have mentioned in previous reports the Law Council wrote to all major political parties contesting the 2010 Federal Election seeking their views on a range of issues of significance to the legal profession. The Law Council received responses from the Australian Labor Party, the Greens and the Coalition.

Overall the responses from both the Australian Labor Party and the Coalition were disappointing and lacked commitment to dealing with the key policy issues of importance and relevance to the Australian legal profession particularly in the areas of access to justice, asylum seekers, human rights, anti-terror laws and recruitment and retention of lawyers.

The feedback to our questions did little to indicate these important issues would be adequately addressed if either party won Government – only the Greens seemed to appreciate the importance of addressing many of these issues as a matter of priority.

The response to the Law Council's access to justice concerns was particularly disappointing, with Labor and the Coalition failing to commit to significantly boosting legal assistance sector funding, or to introducing initiatives aimed at encouraging more legal practitioners to practise in rural, regional and remote areas of Australia.

Neither party made any commitment to addressing the Law Council's concerns over the treatment of asylum seekers, particularly with regards to increasing access to legal advice and assistance for those people seeking asylum in Australia.

A full list of federal election questions and responses is available at [www.lawcouncil.asn.au](http://www.lawcouncil.asn.au)

While the issue of access to justice did not seem high on the agenda of the federal politicians during the election, it was certainly the focus of two major conferences held in Queensland during late August.

At the Second Access to Justice and the Role of Bar Associations and Law Societies in Asia Conference, lawyers and bar executives from across Asia examined issues relevant to access to justice and the need for independence in the justice system. The conference was attended by representatives from 12 countries throughout Asia.



Following on from this Conference was the 3rd National Access to Justice and Pro Bono Conference held on 27 and 28 August 2010. Hosted by the Law Council, Queensland Law Society and National Pro Bono Resource Centre, this landmark event was attended by over 300 delegates and explored a number of topics relevant to criminal justice, pro bono, civil and family law and working together/emerging needs.

Both of the access to justice conferences were the result of a collaborative effort and the Law Council would like to acknowledge and thank everyone who assisted in ensuring these events were a success. An in-depth overview of these conferences is provided in this edition of *@theLCA*.

Throughout late July and early August the Law Council continued to work with our constituent bodies on a national response to Council of Australian Governments (COAG) National Legal Profession Reform Proposal consultation paper. The Law Council held a final consultation meeting on 24 July and made its submission to the Taskforce on 13 August. The submission highlighted the final position of the Law Council in relation to a number of key areas outlined within the COAG consultation paper including composition of the National Legal Services Board, Powers and Functions of the Standing Committee of Attorneys-General, National Legal Services Ombudsman, Role of the National Legal Services Board and Legal Costs Framework.

Outside of the consultation submission the Law Council also requested the Taskforce provide further information regarding the cost of national regulation and the proposed implementation of the new national regulatory framework. I look forward to providing you with further updates in relation to this project over the coming months.

In early August I travelled to San Francisco to attend the American Bar Association (ABA) Annual Meeting. I had the opportunity to address the Conference in two sessions – the International Bar Leader Roundtable Discussion entitled “*Developments in Lawyer Regulation*” and in another session called “*Lawyers Surviving in a Darwinian World*”. This Conference and the various side meetings that occurred throughout the week, provided me with the opportunity to highlight the great work of the Australian legal profession.



## Law Council participates in Federal Election Great Legal Debate

The Law Council was invited to participate in the 2010 Federal Election Great Legal Debate between the Hon Robert McClelland MP and Senator George Brandis SC, organised by the Australian Financial Review and the Gilbert and Tobin Centre of Public Law.

Law Council President-elect Alex Ward joined Large Law Firm Group Chair Robert Milliner and University of New South Wales Professor Jane McAdam on a panel which was invited to ask questions on a range of topics relevant to the legal profession.

During the debate Mr Ward asked whether the next Government would commit to a

## 2010 Federal Election

In July 2010, the Law Council of Australia invited major political parties contesting the 2010 Federal Election to provide their views on key national issues of relevance to the Australian legal profession.

The Law Council prepared a document containing a list of issues and questions, and requested major political parties provide the details of their policy platform in relation to a number of key areas by 28 July 2010.

Access to justice, asylum seekers, human rights, anti-terror laws and recruitment and retention of lawyers were just some of the of the issues the Law Council invited political parties to address in the lead up to the 21 August Federal Election.

The Law Council also sought views on a number of other significant issues, including gender equality, workers compensation and Indigenous issues which were also poorly addressed by those contending the 2010 Federal Election.

The Law Council received responses from the Australian Labor Party, the Coalition and the Greens.

Overall, the Law Council was disappointed by the responses it received from Labor and the Coalition for failing to commit to addressing many of the key policy areas of concern.

The response to the pre-election questionnaire indicated both the Australian Labor Party (ALP) and the Coalition lacked commitment to dealing with the key policy issues of importance and relevance to the Australian legal profession.

For the full list of questions and responses, visit [www.lawcouncil.asn.au](http://www.lawcouncil.asn.au)

## Kathy Farrell appointed President of Takeovers Panel

The Federal Government has announced that Kathleen Farrell will be the new President of the Takeovers Panel.

Ms Farrell, who is also the immediate past Chair of the Business Law Section of the Law Council of Australia, has been a member of the Takeovers Panel for the last decade. Her elevation to President marks the first time a practising lawyer has been appointed to the role.

Chris Bowen, the Federal Minister for Financial Services, Superannuation and Corporate Law made the announcement at a dinner on 3 August to mark the 10th anniversary of the Takeovers Panel, which from 1991 to 2000 was known as the Corporations and Securities Panel.

Takeovers Panel Director Allan Bulman said the Panel looks forward to Kathy's leadership and guidance – in particular the considerable experience she will bring in relation to mergers and acquisitions and commercial law and policy.

Ms Farrell has a long standing association with Freehills. In 1984 she was one of the first female partners appointed by the firm. She stepped down from the partnership in 2000, but has continued to work for Freehills as a consultant. Ms Farrell is also a director of the Australian Institute of Management (NSW and ACT), and a former board member of the Colorado Group and Pacific Power.

The Takeovers Panel has over 50 members, and includes many of Australia's most well known lawyers.

Ms Farrell replaces Simon McKeon as President of the Panel. Mr McKeon has been appointed Chair of the CSIRO.

Ms Farrell's appointment began on 1 September.

comprehensive review of the anti-terrorism laws, and whether there would be a date set for the appointment of a properly funded Independent National Security Legislation Monitor to review these laws.

The Hon Robert McClelland MP said the Government introduced legislation earlier in the year to implement recommendations of some earlier reviews of counter-terrorism laws to give Parliamentary oversight for the first time of the Australian Federal Police and to expand the powers of the Inspector General of Intelligence and Security to include inquiries into intelligence and security matters involving the Federal Police.

Although the legislation has not yet been passed, Mr McClelland said the Government, if re-elected, was committed to undertaking a review of national security laws with state and territory governments next year.

"And of course we would pay respect and due regard to any recommendations of the reviewer of counter-terrorism laws," he said.

Senator Brandis said a Coalition Government would promptly appoint a suitable person to the position of Monitor.

"I can't commit, and don't commit, of course, to writing a blank cheque and say whatever the independent reviewer says, we will do. But we would certainly consider any recommendations by the independent reviewer of terrorism laws – respectfully and with a strong predisposition in favour of repealing laws that are no longer necessary or useful," he said.

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## Law Council welcomes Indigenous pre-election commitment

The Law Council welcomed the pre-election commitment made by the Government, Coalition and the Greens to take steps to fully recognise Indigenous Australians in the Constitution.

However, the Law Council called on all parties to commit to a referendum in the next term of Government, following extensive consultation with Indigenous peoples, to decide the form of words to be used in any amendments made to the Constitution.

The Law Council also urged all parties to commit to ensuring Australia's laws and policies comply with the UN Declaration on the Rights of Indigenous Peoples, and Australia's obligations under the UN Convention on the Elimination of All Forms of Racial Discrimination.

"Australia's support for the UN Declaration must be underpinned by real action to ensure our laws don't impinge on the rights of Indigenous Australians," Law Council President Glenn Ferguson said.

"All parties should also commit to developing a framework for treaties and other lasting settlements with Indigenous communities," Mr Ferguson said.

"Australia is lagging well behind the rest of the world in this regard, as New Zealand, Canada and the United States have all concluded treaties with their Indigenous peoples," he said.

The Law Council also urged the Government and Opposition to reform the Native Title Act to implement measures to ensure native title claimants do not have to prove a continuous, unbroken connection with their ancestral lands.

"If Labor and the Coalition are serious about reconciliation, practical not symbolic, these measures will have a real impact on efforts to 'close the gap' and reset the relationship between Indigenous and non-Indigenous Australians," Mr Ferguson said.

## Asylum seeker policies fall short

Asylum seeker policies announced by the Government and the Opposition during the election campaign fell well short of expectations about fair process and access to justice for asylum seekers.

Law Council President Glenn Ferguson said Australians' sense of basic decency means treating people fairly and being part of the global response to refugees, and he urged political leaders to adhere to these Australian values.

The Law Council welcomed the Government's lifting of the suspension of processing of claims by Sri Lankan asylum seekers and its commitment to reviewing the suspension of Afghan claims.

"Treating people fairly means considering the situation of each person on a case-by-case basis and the lifting of the suspension is a step in the right direction," Mr Ferguson said.

The Law Council has previously raised concerns about offshore processing and will be seeking further details of the new offshore processing initiatives announced by Prime Minister Julia Gillard.

"Playing our part in the international refugee response requires the Government to be fair and reasonable in its approach to asylum seekers – offshore processing leaves vulnerable people with no guarantees that their basic legal rights will be protected," Mr Ferguson said.

The Law Council was also concerned by announcements made by the Opposition which raise significant issues about the fairness of its proposed treatment of asylum seekers.

The Opposition policy proposes considerable expansion of ministerial discretion.

"The Law Council considers that processing of claims should be conducted under the principles in the Migration Act with only a limited role for ministerial discretion," said Mr Ferguson.

He said the Law Council was also troubled by the proposal relating to the presumption against granting refugee status to applicants who have deliberately discarded their identity documentation – this fails to take into account people's individual circumstances.

"The Law Council was particularly troubled by the Opposition's announcement that it will abolish free legal advice to offshore entry persons seeking a review of an unfavourable decision. Vulnerable people should have access to the advice they need to understand our legal processes. Access to justice is denied if this does not occur," Mr Ferguson said.

The Law Council has also asked the current Government to detail what legal services it is providing to Afghan and Sri Lankan asylum seekers.

## Australia heavily criticised by United Nations Discrimination Committee

On 28 August 2010, the UN Committee on the Elimination of Racial Discrimination (CERD) released its 'concluding observations' on Australia's performance under the Convention on the Elimination of All Forms of Racial Discrimination.

The CERD heavily criticised Australia's record under the Convention, particularly with respect to Indigenous Australians, refugees and asylum seeker policy and full implementation of the Convention in domestic law. The CERD recommended:

- ◇ Australia should review its mandatory detention of asylum seekers to ensure it is limited by statute and is always a measure of last resort;



## Call for nominations for the Australian Young Environmental Lawyer of the Year Award

Nominations for the Australian Young Environmental Lawyer of the Year Award are now open. To be eligible for the award, a nominee must be admitted to practice in any Australian jurisdiction (including private practice, government law firm, in-house counsel or NGO) or an academic at an Australian university; and under 35 years of age as at 30 October of the year of the award.

The key criteria for the award are:

- ◇ Outstanding contribution to the field of environmental law in Australia or internationally;
- ◇ Voluntary contribution to the community, especially to environmental or environmental law NGOs.

Further information about the award and how to nominate is available on the Law Council website.

Nominations will close 30 September 2010 and must be emailed to [gerard.oneill@lawcouncil.asn.au](mailto:gerard.oneill@lawcouncil.asn.au) before 5pm on Thursday 30 September.

The award will be announced in early October.

## Australian experts set to explore current regulation at LAWASIA Privacy Law Seminar

The LAWASIA Council resolved in November 2009 to adopt as LAWASIA policy the *LAWASIA Declaration on the Need for Adequate Privacy Laws in the Asia Pacific Region*.

The Declaration and the Privacy Principles encapsulate the Council's desire to adopt statements of principle that highlight universally-accepted values of the legal profession of the region.

As further commitment to this declaration, LAWASIA will be hosting a Privacy Law Seminar at the Queensland Law Society on Friday 1 October 2010.

At this seminar, leading Australian privacy law experts will discuss the current state of Australia's privacy regulation, and experts from across Asia will share their knowledge of privacy in their respective jurisdictions.

Australia's privacy laws are particularly complex and are about to be subject to wide-ranging reforms which have the potential to place constraints on media reporting. The reforms will also focus attention on the ability of Australian companies to transfer data offshore. This in turn will raise serious questions about the adequacy of privacy laws in key Asian jurisdictions such as India, Singapore, Malaysia, Hong Kong and Japan – where Australian companies and their subsidiaries commonly operate.

For further information or to register for the conference go to <http://lawasia.asn.au/privacy-law-2010.htm>

- ◇ The removal of the suspension on processing of visa applications from Afghan asylum seekers should be expedited;
- ◇ Australia should consider the establishment of a domestic implementation mechanism for the International Convention on the Elimination of All Forms of Racial Discrimination;
- ◇ The *Racial Discrimination Act 1975* prevail over all other legislation;
- ◇ Australian corporations should be prevented from engaging in activities which negatively impact upon the enjoyment of rights by Indigenous peoples;
- ◇ Australia should consider the negotiation of a treaty agreement with Indigenous Australians;
- ◇ Australia should ensure the Northern Territory 'intervention' is reformed to comply with the 2008 Northern Territory Emergency Response Review Board's recommendations;
- ◇ Australia should review the high standard of proof required for native title claimants seeking to prove a continuous, unbroken connection with their ancestral lands;
- ◇ Increased funding, in real terms, should be allocated to Indigenous legal aid; and
- ◇ Resources be dedicated to address the social and economic underpinnings to Indigenous disadvantage, including increasing the use of Indigenous courts and diversionary programs and reviewing the implementation of the recommendations of the Royal Commission into Aboriginal Deaths in Custody.

The Law Council has previously voiced a number of concerns with respect to the matters now raised by the CERD.

The Law Council has opposed mandatory detention of asylum seekers generally and has advocated for the passage of legislation which provides that if detention is imposed, it should be as a last resort, for specified purposes and for the shortest time practicable.

The Law Council has also written to the Minister for Immigration raising serious concerns about the possible breach of Australia's domestic and international human rights obligations resulting from the suspension of processing of asylum claims by particular nationalities. The Law Council has called for the lifting of the suspension.

The Law Council has also previously expressed support for the notion of entrenched constitutional or legislative rights, and called for:

- ◇ Development of treaties and constructive agreements with Indigenous communities;
- ◇ The NT intervention to be made subject to the *Racial Discrimination Act 1975*; and
- ◇ Reform of the *Native Title Act 1993* to introduce a 'presumption of continuity', thereby reversing the onus of proving a continuous, unbroken connection with native title lands.

The Law Council has also campaigned strongly for substantially increased funding for Indigenous legal and interpreting services. In addition, the Law Council has regularly recommended that the socioeconomic causes of Indigenous disadvantage be addressed in order to address enormously high rates of Indigenous offending, incarceration and recidivism. This has included support for increasing the use of Indigenous sentencing courts and diversionary programs, particularly for juvenile offenders, as well as targeted, culturally appropriate rehabilitation programs.

The Law Council supports the observations and recommendations of the CERD and recommends that the Federal Government move to address the CERD's findings as soon as possible.

### 3rd National Access to Justice and Pro Bono Conference

Over 300 delegates attended the 3rd National Access to Justice and Pro Bono Conference in Brisbane on 27 and 28 August 2010. The Conference was hosted by the Law Council, in conjunction with the Queensland Law Society and the National Pro Bono Resource Centre.

The Conference delegates were addressed by more than 50 influential speakers from Australia and abroad including the Chief Justice of Queensland – the Honourable Paul de Jersey AC, who opened the Conference.

Some of the highlights of the Conference included presentations by:

- ◇ Shadow Attorney-General, Senator the Honourable George Brandis SC, Mark Dreyfus QC, MP Member for Isaacs (Vic) and Greens Senator Larissa Waters, who engaged in a panel question and answer session exploring the topic of access to justice – a vision for the future;
- ◇ Father Frank Brennan, Dr John Falzon, and Michael Brennan, who explored the human rights, social inclusion and economic perspectives on the case for funding for access to justice;
- ◇ US Ambassador to Australia, Jeffrey L Bleich, on the widening justice gap in the United States;
- ◇ President and Chief Executive Officer of the Pro Bono Institute (United States), Esther Lardent, on the role of pro bono in access to justice;
- ◇ Aboriginal & Torres Strait Islander Social Justice Commissioner, Mick Gooda, Professor Chris Cunneen and Alison Vivian, on closing the gap on access to justice for Aboriginal and Torres Strait Islander peoples;
- ◇ Liz O'Brien, Alan Kirkland, Michelle Hannon and Shane Duffy, who engaged in a panel discussion on the road ahead for access to justice and legal assistance; and
- ◇ Honourable Acting Justice Ronald Sackville, who provided insights on reflections and directions for access to justice.

At the opening of the two day conference, the delegates witnessed a moving welcome to country performed by Nunukul Yuggera Aboriginal Dancers.

Delegates at the conference dinner had the opportunity to hear the Honorable Justice Lex Lasry QC, Supreme Court of Victoria, speak about the role of media in access to justice.

The Law Council is extremely proud to have been involved in such a landmark event for the access to justice legal community and looks forward to the next conference in 2012. The Council is also very grateful for the efforts of the Conference Organising Committee and in particular the Queensland Law Society.



L-R: Mark Dreyfus QC MP, Senator the Hon George Brandis SC, Senator Larissa Waters



L-R: Bruce Doyle, Michael Brennan, Father Gerard Brennan, Dr John Falzon, Glenn Ferguson



L-R: Ross Ray QC, Raymond Schuster (Samoa), Mirriam Lidimani (Solomon Islands), Sir Kina Bona (Papua New Guinea), Alex Ward, Rodney Kingmele (Samoa), Alois Jerewai (Papua New Guinea)



L-R: Kimitoshi Yabuki, Chief of the International Legal Cooperation Centre, Vice Chair of the Committee on International Relations, Japan Federation of Bar Associations; Alex Ward, President-Elect, Law Council of Australia; Ricardo Simanjuntak, Co-Chair, National Board of Management of PERADI, Indonesian Advocates Association (PERADI); Mark Woods, Chair, Access to Justice Committee, Law Council of Australia

## 2nd Access to Justice and the Role of the Bar Associations and Law Societies in Asia Conference

On 25-26 August, 2010, the Law Council co-hosted, with the Indonesian National Lawyers Association (PERADI), the 2nd Access to Justice and the Role of the Bar Associations and Law Societies in Asia Conference in Brisbane.

Approximately 30 delegates attended the invitation only Conference, representing 12 peak legal professional bodies throughout Asia, including Australia. The Conference was extremely successful and the Law Council wishes to acknowledge the generous contributions of the Queensland Law Society and the Bar Association of Queensland. The Law Council also wishes to acknowledge the contribution of

AusAID, which provided funding to assist 17 delegates from developing bars to attend the Conference.

The theme of the Conference was *'How do bar associations and lawyers uphold their own independence and that of the justice system?'* The program focused around the theme of 'independence' and was structured to ensure that a representative from each country presented a paper.

The Law Council's Access to Justice Committee was invaluable in developing the program together with the Secretariat and PERADI and the Chair of the Committee, Mr Mark Woods, was an excellent facilitator throughout the Conference.

A highlight of the Conference was an outstanding workshop on judicial independence conducted by Justice Fryberg from the Supreme Court in Queensland. Justice Fryberg identified, and clarified, the 'essentials' for judicial independence and discussed these with the participants.

Comprehensive country reports were prepared by participants responding to questions on access and legal aid initiatives. A copy of these reports are available on request and will be accessible from the Law Council website soon.

At the conclusion of the Conference, Mr Woods oversaw the drafting of ongoing principles that were agreed to be shared by the participants regarding access to justice and the need for independence.

The next Conference will be held in 2012.

Delegates at the 2nd Access to Justice and the Role of the Bar Associations and Law Societies in Asia Conference



## World Masters of Law Firm Management

The crucial issue of senior talent retention was addressed by two world-class talent management experts during a recent Law Council seminar in Sydney.

Organised by the Law Council’s Legal Practice Section, the World Masters of Law Firm Management was held on 19 August at the Four Seasons Hotel.

Sydney-based management consultant John Colvin and Deloitte’s Nicky Wakefield headlined the seminar and provided key insights into attracting and retaining talent at the top level.

John Colvin is Executive Chairman of Johnson, an executive search company, former Partner of Heidrick & Struggles and former managing partner/CEO of Blake Dawson. He specialises in board, CEO and professional services work.

Nicky Wakefield is the lead Partner for the NSW Human Capital Consulting Practice at Deloitte. For more than 15 years she has worked in the public and private sectors and professional services providing management consulting and advisory support on people and change.

Following the keynote presentations, an expert panel including Daljit Singh (Director of Talent Management, Baker & McKenzie, Sydney) and Kriss Will (Managing Director of Kriss Will Consulting, Melbourne) came together to discuss the trends and solutions, and delegates had the opportunity to ask questions.

Feedback from the event was very positive, with delegates gaining valuable information including how to ‘have the discussion’ with senior talent on not just why they leave, but more importantly, why they stay.

Delegates also gained useful advice on how to attract and retain senior talent in suburban and regional areas.

“Retaining senior talent is one of the keys to remaining competitive in today’s market and it is a vital issue for law firms everywhere,” Law Council President Glenn Ferguson said.

“Hiring talented people is one thing – retaining them is another. Understanding the motivation to stay or go is critical for firms looking to retain talent and grow their businesses,” he said.

“The Law Council’s World Masters seminars have earned a reputation for showcasing some of the globe’s most sought after law firm leaders and management specialists – and this year’s event was no exception,” Mr Ferguson said.

A detailed article on the outcomes of this seminar will be published in the upcoming September edition of the Australasian Law Management Journal. Free subscriptions to this journal are available by visiting [www.lawcouncil.asn.au/almj](http://www.lawcouncil.asn.au/almj)



John Colvin



Nicky Wakefield



Daljit Singh



Kriss Will

