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# The State of the Profession

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**Speech given by John Corcoran, President,  
Law Council of Australia  
at the 36<sup>th</sup> Australian Legal Convention, Perth**

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## Welcome

Firstly, may I acknowledge the traditional custodians of the land on which we meet, and pay my respects to their elders, both past and present.

Chief Justice of the High Court, the Honourable Robert French, Commonwealth Attorney-General, the Honourable Robert McClelland MP, distinguished guests, fellow Australian lawyers, ladies and gentlemen.

## Introduction

One of the staggering features of the Australian legal profession is its extraordinary diversity.

We have sole practitioners, lawyers in regional practices, suburban lawyers, commercial lawyers in top-tier firms, barristers, judges, solicitors in legal aid offices and Community Legal Centres, in-house lawyers, young lawyers, women lawyers, Government lawyers, and so on.

So, how are all these very different segments of our profession faring in 2009?

In other words, what is the current state of the legal profession?

It depends on where you look.

I will begin with a couple of matters affecting all lawyers. I will then move on to issues relevant to individual sectors of the profession.

## GFC

Many in the profession encountered some very difficult economic times at the start of the year.

As the Global Financial Crisis impacted on the clients of Australian law firms, there was, in turn, an impact on the firms themselves.

After all, it is difficult for law firms to be busy when their clients are not busy.

For the first time for many years, job security was at the forefront of many lawyers' minds.

Happily, over the course of the year, economic conditions have improved.

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The Australian profession has handled the crisis better than many other nations. There have been job losses, but certainly not on the scale seen elsewhere.

However, there is little room for complacency.

Right now, I believe, is a better time than ever for lawyers to improve their value by placing their skills and experience under the microscope and assessing what they need to do to become an even better practitioner.

## **National legal profession reform**

All Australian lawyers stand to benefit from uniform national legal profession regulation.

Given the enormous contribution professional legal services make to Australia's economy in both a national and international sense, it is simply unacceptable that we do not yet have a uniform, simple piece of legislation to promote efficient legal practice on a national scale.

Our legal profession is currently the most over-regulated profession in Australia. Lawyers have to work their way through a myriad of rules, some of which are inconsistent, especially across jurisdictions.

These jurisdictional differences add to the compliance burden for both law practices and individual practitioners. They also increase the cost of legal services for consumers.

The Law Council welcomed the Australian Government's announcement earlier this year that legal profession reform would be added by the Council of Australian Governments (COAG) to Australia's micro-economic reform agenda.

In April, the Prime Minister and Attorney-General announced the formation of a National Legal Profession Taskforce.

Law Council Secretary-General Bill Grant was appointed a member of that taskforce.

National legal profession reform promises benefits beyond merely reducing compliance costs. The overall goal is to move towards a more functional and efficient Australian legal services market. The approach is to establish an integrated regulatory framework in each state and territory that is underpinned by uniform legislation.

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This approach is expected to facilitate the seamless delivery of legal services throughout Australia.

## **Migration Lawyers**

As we strive for a streamlined profession where the focus is on national uniformity, it is absurd that Australia's migration lawyers are currently subject to dual-regulation under both the migration agents registration scheme and legal profession regulation.

The Law Council believes that dual-regulation is unnecessary, conflicts with the idea of delivering a uniform legal profession, and has resulted in a serious shortage of qualified counsel to assist in migration legal work.

The Law Council will continue to press for the eventual removal of migration lawyers from dual-regulation.

## **AML**

Another area of potential complexity inconsistent with the goals of the national profession project is the Stage Two of the anti-money laundering or AML legislation. These reforms target lawyers amongst others.

The Australian legal profession has benefited from the Law Council's efforts to gain exemptions for lawyers under Stage One of the AML legislation, which primarily targeted the financial sector.

The Stage Two reforms, we believe, should not target legal services in general, nor low risk services or clients.

The legal profession in Canada, Japan and the USA has not been subjected to suspicious matter reporting obligations under AML legislation on the basis that these obligations are entirely inconsistent with the lawyer/client relationship.

The International Bar Association's position is that lawyers should not be required to report suspicious matters if information was obtained in circumstances of legal professional privilege or professional secrecy.

In the light of these international trends, the Law Council advocates strongly that a suspicious matter reporting obligation should not apply to the legal profession under Stage Two AML legislation.

If any further regulation of lawyers is considered necessary, we believe this is best addressed in the lawyer's conduct rules, not under separate laws.

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## Access to Justice

Australian lawyers who rely on funding from the legal assistance sector are doing it tough.

More than 10 years of ineffective access to justice policies have produced a dire set of circumstances.

The Law Council believes the legal assistance sector is facing an impending crisis over the coming 12 months as a result of the increased strain on legal aid services arising from the global financial crisis as well as other factors.

Lawyers working in this sector must receive reasonable compensation. If this does not occur, we run a serious risk of losing more lawyers in the legal assistance sector.

A survey commissioned by the Attorney-General's Department last year revealed that one in three Australian law firms that are currently practising family or criminal law have moved away from providing legal aid services.

The key reason cited was the rate of remuneration. According to the study, in most cases, the rate for legal aid work is, at best, 50 per cent less than if the work was paid for commercially.

In 2008 the Victorian Bar commissioned a study into the fees paid by Victoria Legal Aid to barristers in criminal cases. The report expressed serious concerns that the under-funding of Victoria's criminal justice system over the past 15 years could lead to increased costs from aborted trials and retrials and poorer outcomes for victims and defendants alike.

As the report identifies, to maintain the viability of a fair justice system, it is essential that the underfunding of legal aid barristers be addressed. The effective annual income of a junior legal aid barrister is less than \$40,000 per annum. This is because their real take home pay has fallen by between 25 and 40 per cent over the past 15 years.

These are all extremely worrying figures.

When lawyers see little future in handling work like criminal law work for instance, this becomes more than just a problem for the legal profession – it ultimately becomes a problem for the Australian Government and society in general.

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Without a properly funded justice system, there are flow on costs to the community resulting from delays in the court process and an explosion in the number of self-represented litigants.

This is also a rule of law issue. If a significant percentage of the community cannot access the courts and engage the legal system then we do not have justice for all.

Legal aid funding was not increased in the 2009 Federal Budget despite clear indications that the Government's lack of funding for legal aid is having a serious impact.

It is absolutely critical Mr Attorney that the Australian Government makes funding for the legal assistance sector a priority. We look forward with great anticipation to the 2010 Federal Budget.

The Law Council this year made a submission, recommending that governments should:

- develop and adopt a mechanism to break down the Commonwealth/state funding divide;
- create and adopt a truly national legal aid means test;
- increase fees for private practitioners undertaking legal aid work;
- create incentives for lawyers to practice in rural, regional and remote areas;
- increase funding for community legal centres;
- increase funding for dedicated Indigenous legal services; and
- restore a national civil legal aid program.

The Law Council will continue its advocacy on this issue.

In August 2010 the Law Council will hold its 3<sup>rd</sup> National Access to Justice and Pro Bono Conference in Brisbane.

Hopefully this event will provide an opportunity to assess in detail the Government's response to the crisis.

We strongly encourage any practitioners with a particular interest in access to justice and pro bono work to attend.

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## RRR

There are worrying signs for the state of the legal profession in country Australia.

A Law Council study released in July painted a gloomy future for the practice of law in the bush.

According to the findings of the survey of Rural, Regional and Remote (RRR) Lawyers, problems in recruiting and retaining lawyers in country areas is negatively impacting on the ability of people living in these communities to access legal services.

More than 40 per cent of principals surveyed nationally indicated that their practice currently does not have enough lawyers to service their client base.

Not only did the survey results suggest that there is a shortage of lawyers at present, it is likely that this situation will dramatically deteriorate.

The results indicated that a large number of legal practitioners, many of whom are sole practitioners, will retire in the next five to 10 years.

Alarming, 42 per cent of the legal practitioners surveyed do not intend to practise law in five years' time

The survey also found that:

- 71 per cent of principal lawyers cited succession planning as their biggest concern, followed by attracting additional lawyers (58 per cent) and attracting replacement lawyers (51per cent);
- 64 per cent of firms undertake pro bono work and 51 per cent undertake legal aid work; and
- 71 per cent of respondents undertake other unpaid voluntary work within their area.

These last three figures are significant. Country practitioners undertake a significant amount of legal aid and pro bono work. They provide country people with access to legal aid and work tirelessly for the less privileged within their communities. They are also community-minded individuals who contribute a great deal in general to the centres in which they live. Without them, the communities will suffer.

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This, of course, is an issue that will not go away. Current population projections indicate that the number of individuals living outside capital city areas will rise by 3 million by 2026.

That's an additional 3 million Australians who will require ready access within their communities to a range of professional services, including legal services.

Unless we address current and future lawyer shortages, there will be a dramatic impact on access to justice throughout regional Australia.

We are considering recommendations arising from the survey in relation to possible Government initiatives to address these problems. These include including waiving FBT liabilities on Employer Payments of employee benefits, monetary allowances and bonuses for relocation or remaining in regional areas, repayment of HECS- or FEE-HELP liabilities and increasing opportunities for clinical placements in regional areas for law students and graduates.

## **Women Lawyers**

Despite increasing opportunities in Australia for women in the law, there is an enormous amount of work still to do in this area.

From a female lawyer's perspective, the legal profession is, unfortunately, far from a level playing field.

The Law Council's Equalising Opportunities in the Law (EOL) Committee recently commissioned a consulting company to independently conduct a Court Appearance Survey.

The survey will provide robust and reliable data on the nature of appearances by legally trained people in Australia's superior courts. The results of the survey are expected to be released shortly.

The recommendations that flow from the survey findings will dictate the Law Council's strategy for a way forward on this issue.

It is expected that the survey results will confirm what we already strongly suspect – that female barristers and advocates are underrepresented in Australia's superior courts, when compared to the number of women overall in the profession.

Earlier this month, figures released illustrated that women in general were struggling when it came to closing the gap in pay across all forms of employment. Indeed for some occupations the gap is widening.

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The legal profession is far from immune to this.

The Law Council, via its EOL Committee, has made a submission to a House of Representatives inquiry into *Pay equity and associated issues*. The submission made specific comments about pay equity and the legal profession, urging the House of Representatives Standing Committee to make recommendations to address the inequities.

## **International Work**

The internationalisation of legal services has continued to drive growth for the Australian legal profession.

In the 2006-2007 financial year, Australia's income from cross-border transactions and the export of legal services increased by over 24 per cent to \$675m. Asia is now the largest and fastest growing market for Australian legal services, with China and Hong Kong alone accounting for 16 per cent of Australia's export market for legal services.

In recognition of the growing relevance of international markets to Australian lawyers, the Law Council's International Strategy is focused on developing mutual understanding and trust with overseas counterparts and working with counterpart bodies to foster hospitable reciprocal conditions for the practice of foreign law. In this regard, Australia's liberal regime for the regulation of foreign lawyers remains one of our greatest strengths.

This year the Law Council has reaffirmed Memoranda of Understanding with the Korean Bar Association and the Japan Federation of Bar Associations.

In addition to our strong professional links, Korea and Japan are two of Australia's largest trading partners and are countries with which Australia is currently negotiating free trade agreements.

The Australian legal profession has been well prepared for the growth of international legal work. Australian lawyers are very highly regarded across the world and are regularly sought after by foreign and international firms.

The vast majority of Australian lawyers who practice overseas return home and bring with them the benefit of their skills and experience gained overseas.

Through various initiatives, the Law Council and the Australian Government will continue to work together to promote international legal services market liberalisation and associated regulatory change in Australia and overseas.

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In the not too distant future, I have no doubt that Australian lawyers will be able to move freely between a range of jurisdictions in an increasingly sophisticated and developed legal services market.

## **Overseas Qualified Practitioners**

But there is a dark cloud on the horizon.

The release in February last year of the Law Admissions Consultative Committee's (LACC) *Uniform Principles for Assessing Qualifications of Overseas Applicants for Admission to the Legal Profession* highlighted the difficulties inherent in the current admissions laws and decision making powers when assessing overseas qualified applicants for admission in Australia.

The introduction of these *Uniform Principles* has resulted in some qualified applicants being required to undertake considerably more academic study of Australian law than was previously the case.

The Law Council recognises that there is a balance to be achieved between what is expected of Australian qualified applicants for admission and what is expected of overseas qualified applicants. We also believe this is an issue that needs to be addressed under the COAG legal profession reform process.

In the interim, we will continue to work toward ensuring greater recognition of overseas qualified legal practitioners' academic qualifications, practical legal training, and experience in the practice of law when deciding whether or not such an applicant should be eligible for admission in Australia.

Without such an outcome, Australia will become a less attractive destination for overseas qualified legal practitioners, which will be detrimental to the overall skills and experience base of the Australian legal profession. This, in turn, will hamper our efforts to expand the international legal services market for Australian lawyers.

## **Young lawyers**

Despite the many challenges we face, the future of the profession looks bright for our young lawyers.

The inaugural Australian Young Lawyers Conference is being held in conjunction with this Convention, and let me say what a pleasure it is to have so many young lawyers here today.

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Australia has 35 law schools producing about 6,000 law graduates a year and there are so many options out there for them.

There are careers in small, mid and top-tier firms, suburban firms, Government departments, non-government organisations, Community Legal Centres and Legal Aid Commissions.

And of course, as we are all now fully aware, there are countless opportunities for law graduates in rural and regional Australia.

To fully harness emerging talent within the legal profession, we need to appreciate the career perspectives of today's young lawyers.

According to the Australian Law Students Association (ALSA), anecdotal evidence indicates that, unlike generations that have gone before them, today's law graduates see the world as one, large, ever-shrinking market.

They don't feel restricted to working in one jurisdiction and have few qualms about moving their career within Australia or around the world.

Furthermore, gone are the days when firms sign up graduates for life. ALSA believes today's law graduates and young lawyers don't view anything they do during the first 10 years of their career as anything but a stepping stone to something bigger and better.

The legal profession must cater to these needs.

Young Indigenous Australians are underrepresented in the legal profession – a statistic that the Law Council is committed to addressing.

Each year we offer the John Koowarta Reconciliation Law Scholarship, designed to assist outstanding young Indigenous students continue their studies and enter the profession.

Through the scholarship, we have previously assisted nine Indigenous law students to complete their legal studies and go on to admission as lawyers.

Earlier this year it gave me great pleasure to award scholarships to three more exceptional Indigenous students – Rebecca Martin, Hannah Dawson and Peta MacGillivray.

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## Common Goals

The Australian profession may be diverse, but for all our differences, there are also things we have in common.

As lawyers, we are all committed to the administration of justice and the rule of law.

The Law Council has always believed that an independent legal profession is crucial to building and maintaining a society in which the rule of law and human rights are respected. Without access to competent and independent legal practitioners, people are often unaware of or unable to exercise their rights effectively. When this occurs, the protections afforded both victims and defendants under domestic and international law are rendered meaningless.

The important matter to note about the nature of the legal representation provided by members of the Australian profession is that it should be available to all, regardless of where they come from or the nature of the accusations against them.

Every day Australian lawyers are involved in the business of representing the members of our community who are most vulnerable to having their human rights abused. Many of these lawyers give their services pro bono.

## Pro Bono

In fact, Australian lawyers and law practices continue to contribute to pro bono legal assistance very generously, offering thousands of hours in legal assistance to those who would otherwise be unable to obtain access to justice.

Figures recently released by the Australian Bureau of Statistics suggest that the estimated value of pro bono work undertaken by lawyers during the 2007–08 financial year was \$238.2 million. Qualified legal staff spent close to 1 million hours providing pro bono legal services during this time.

That is an admirable commitment by the whole of the legal profession; to dedicate such a significant portion of their time to “working for free” in the interests of the community.

However, this great contribution by the profession does not relieve governments of their clear duty to the community to fund the legal assistance sector adequately.

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## **Charter of Rights**

The experiences of the profession in the area of human rights and rule of law have contributed to the Law Council's consideration of whether a Charter of Human Rights at the federal level would help address the current gaps in legal protection for human rights.

The Law Council believes a Charter of Rights is the best option for improving human rights protection in Australia.

Currently, Australia stands alone among liberal democracies by the absence of a specific and comprehensive protection for human rights at the federal level.

The Law Council firmly believes that the current federal legal framework is not suited to robust human rights protection, with our government departments, courts and Parliaments having few tools or opportunities to enable them to consider human rights when making, interpreting or administering the law.

Late last year the Law Council adopted a policy on a Federal Charter of Human Rights after extensive consultation with our Constituent Bodies and debate by Law Council Directors.

The policy formed the basis for a major submission to the National Consultation on Human Rights established by the Attorney-General last December.

The consultation, being conducted by a Committee chaired by Father Frank Brennan, has received around 40,000 submissions, which indicates a high level of public interest in the issue. In addition to our submission, we were invited to address a public hearing before the Consultation Committee and Father Brennan has met with both the Law Council Executive and with me separately to discuss the issue in more depth.

The Law Council is viewed as a major contributor to the issue of improving human rights protection and it can be proud of its work in this area.

## **Rule of Law and Fiji**

The Australian legal profession's defence of human rights and the rule of law extends beyond our shores.

This year the Law Council expressed its concern at political developments in Fiji, saying the events represent a direct affront to the rule of law, the independence of the judiciary and the democratic process.

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We stressed that respect for the rule of law is fundamental in any democratic society and is also of critical importance to the stability of Fiji.

I understand that just last week a delegation from LAWASIA visited Fiji. I look forward to seeing the report on this visit.

The Law Council has also voiced its strong support for the Fiji Law Society after its President, Dorsami Naidu, was reportedly arrested.

And we are delighted to have Mr Naidu with us today.

**(Pause for Applause)**

## **Future / The Law Council**

Now looking to the future – the Law Council of Australia, as the nation’s peak legal body, will continue to strive to do its very best to represent our whole profession.

We represent 16 law societies and bar associations and the Large Law Firm Group.

All up, we are working on behalf of about 56,000 lawyers

A great deal of this work will continue to be done at the coal-face, as we continue to generate mountains of work, the bulk of which most people are not fully aware of.

Earlier this year I wrote an article on the enormous scope of policy issues in which the Council is involved at any given time.

From compiling submissions and appearing before Parliamentary committees to assembling working groups and meeting with decision-makers, the work done by the Law Council’s policy and Section staff covers an enormous breadth of issues.

Since the last State of the Profession Speech was delivered by former Law Council President Tim Bugg, back in March 2007, the Law Council has produced more than 220 high quality submissions on a very large number of topics.

Many of these submissions were prepared by our five specialist Sections: the Business Law Section, Family Law Section, Federal Litigation Section, Legal Practice Section and International Law Section.

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These Sections also coordinate numerous committees and working groups comprising leading members of the profession and experts in their field who give freely of their time.

From bankruptcy to a charter of rights to tax law and family law; from cartel conduct to anti-money laundering to migration law and Indigenous issues; from the trade practices act to carbon pollution reduction to immigration detention....we have covered hundreds of issues.

And we are getting better at informing the profession, and the wider community, about our work and our achievements.

The media is but one channel through which we are doing this – and when you look at the statistics, I think you'll agree we're doing it well.

Between 1 January and 31 August this year, the Law Council issued 25 media releases and alerts resulting in nearly 500 mentions in the print and electronic media.

We're certainly spreading the word.

One of my priorities when I became Law Council President at the beginning of the year was to improve the manner in which we communicate our activities to the lawyers of Australia.

The work we do is important; it is just as important to communicate what we do to the profession.

This is still a work in progress.

Let me conclude by saying that the Australian legal profession, despite all the challenges it is facing, is in a very healthy state.

But it needs to stay healthy, robust and above all, independent. A strong, unified, national voice is essential to achieve this.

At the Law Council, we will continue to do as much as we can to maintain and improve the health of what is a very diverse profession, and at the same time look beyond the horizon to secure its future.

Thank you.

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