



Law Council
OF AUSTRALIA

Annual Business Law Section Planning Workshop

Speech delivered by Mr Greg McIntyre SC, President, Law Council of Australia at the Business Law Section Planning Workshop, Melbourne.

9 February 2024

Thank you Pamela and your Executive for providing me with the opportunity to address the Business Law Section's Annual Workshop today.

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 Ngulluck Nyinniny

Whadjuk Noongar Boodja

Wurundjudjeri Woi-wurrung Bunong Boon Wurrung Kulin Boodja

Nguny burruniny quop kaditj kanya

Nitja baarl birrdiya baarl boodjah

Koora yeye Borrrdahwan

Kaia.

I have been asked to speak with you today about some of the priorities I see emerging in 2024 and being pursued by the Law Council.

All of our work will be fashioned in accordance with the Strategic Plan 2021-26, which includes as an objective advocating for the legal business sector.

It has been a month, or even less, since the Christmas shutdown period finished for most businesses, but in that very short period of time, the BLS has led or significantly contributed to nearly 10 submissions and I believe a number more are close to finalisation as we speak. This is about one submission every three days.

These submissions have ranged from merger reform – which we had journalists avidly waiting for – through to scams, tax accountability, climate-related financial disclosure, and enhancing the Tax Practitioner Board's sanction regime.

Yesterday I signed off on a submission on Payments System Modernisation (Regulation of Payment Service Providers) prepared by the Financial Services Committee of the BLS and the National Electronic Conveyancing System Committee.

In the past week, in accordance with protocol, I approved Angus Lang and Warwick Rothnie of the Intellectual Property Committee giving evidence to the Senate Legal and Constitutional Affairs Committee on the Copyright Legislation Amendment (Fair Pay for Radio Play) Bill.

We also rely heavily on the advice and expertise of the BLS for Law Council responses on everything from privacy law reform to cybersecurity, and we could not operate as we do without you.

We are very fortunate to have experts such as yourself willing to step up, time and time again to ensure we provide comprehensive, well considered advice to Government to influence decision making in order to improve reforms and make sure that, as far as possible, they are fit for purpose and potential harms are limited.

A great strength of the Law Council, is our consultation process, which allows us to gather and gauge views from across the profession. Knowing that our submissions are painstakingly developed and provide views generated from the knowledge and expertise of such a wide range of parties is key factor in the respect Government and Parliamentarians place in us and in our recommendations.

Our willingness to work collaboratively and distil diverse views in our submissions and advocacy means we are seen as a balanced and trusted voice.

In the wake of the PwC scandal, we are seeing increased concern around confidentiality from the Commonwealth. In some instances, this has led to them limiting the number of people who can be privy to information when they seek views on a new policy or idea and a requirement to sign confidentiality agreements. We will pursue dialogue the Attorney-General's Department and Australian Tax Office to develop a balanced approach which preserves confidentiality but allows adequate communication with LCA membership.

That is not the only impact. The Government has announced a range of priority actions in response to the tax leaks scandal, including a joint review by Treasury and the Attorney-General's Department of the use of legal professional privilege in Commonwealth investigations.

We feel strongly about the essential requirement of client legal privilege and that we will definitely be ensuring we are heard on this topic.

In the middle of last year, the A-UKFTA came into force. This Free Trade Agreement with the UK establishes a Legal Services Regulatory Dialogue.

The Dialogue is comprised of legal professional associations, regulatory bodies and admitting authorities from Australia and the United Kingdom.

- for Australia, this is the Law Council of Australia, Legal Services Council (and its Admissions Committee) and the Law Admissions Consultative Committee
- for the UK, eight bodies which comprise the legal professional associations and regulatory bodies for the jurisdictions of England and Wales, Northern Ireland and Scotland.

I have recently written to the Legal Services Commission setting out our position which seeks to avoid highly experienced lawyers being obliged to undertake undergraduate courses in order to obtain admission in Australia.

The objectives of the Dialogue include to consider matters relating to the requalification of lawyers seeking admission to practice in the other country, sharing information on business structures for the supply of legal services, and to discuss 'other matters' relevant to regulation or, more broadly, to trade in legal services between the parties.

Following a preliminary meeting last year, the Dialogue is preparing to convene its first formal meeting in early March.

Together with the other Australian members of the Dialogue, the Law Council is shaping the agenda of this upcoming meeting.

Last year, 2023, was also a significant year for the regulation of the profession in relation to anti-money laundering and counter terrorist financing (AML/CTF) risk - or the so-called 'tranche 2' reforms.

As you know, as it falls squarely within the BLS remit, there was consultation with the Section on changes to the current AML/CTF Act and Rules. The consultation led by the Attorney-General's Department ('Modernising Australia's AML/CTF Regime') is expected to enter its second round any day now.

Needless to say, it will have potentially far-reaching consequences for the profession. Building on the productive dialogue we have established with the Attorney-General's Department will be critical.

I am conscious that the Section and the Law Council's AML/CTF Working Group, which was established to deal with the potential challenges of Tranche 2, have worked extremely well together to date due largely to the active participation of the Chair of the Financial Services Committee, Pip Bell, and member, Shannon Finch, who are also members of the AML/CTF Working Group. The Working Group will be chaired by Juliana Warner and Luke Murphy will continue on in the Working Group as Deputy Chair.

The Section will continue to be engaged in AML/CTF related activity as the profession learns from the findings of the profession-wide AML/CTF vulnerabilities analysis commissioned by the Law Council and published in early October and also as we work to raise awareness throughout the profession of AML/CTF risk by reworking Guidance for the profession.

Drawing on the vulnerabilities analysis, we are also giving active consideration to appropriate augmentation of existing practices to deal specifically with AML/CTF risk.

Ensuring access to justice for all, will continue to be a major focus of our advocacy this year.

Around two weeks ago, we provided to the Commonwealth Government our 2024-25 Pre-Budget submission.

We reminded Government of the importance of investing in legal assistance services.

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 underway and we look forward to its recommendations. There is no denying that Commonwealth NLAP funding is currently half of what is needed to enable legal assistance services to meet demand.

I mentioned earlier, the fact the BLS has been leading our work on climate-related financial disclosure (CRFD). A submission to Government on this topic is imminent thanks to your efforts.

In December 2022 and July 2023, Treasury released high-level proposals for how Australian CRFD standards. They are to align with the International Sustainability Standards Board's International Financial Reporting Standards S2 *Climate-related*

financial disclosures. Subject to development by the Australian Accounting Standards Board they might be incorporated into Australia's existing corporations and financial services legal framework. Treasury has sought feedback on the 'workability' of its proposals.

On 12 January 2024, the Treasury released the Exposure Draft legislation for the Australian scheme, and it is a response to that that is being submitted today.

It will likely come as no surprise to those of you who know me, or following my acknowledgement of country this morning, that Indigenous legal issues will be high on my agenda. I am meeting with the Indigenous Legal Issues Committee on 19 February to discuss such issues.

The Law Council remains committed to pursuing concrete outcomes that close the justice gap for First Nations people, especially for young Aboriginal and Torres Strait Islander peoples, and continuing to consider how broader Uluru Statement calls can best be met.

Sadly, our justice system is failing First Nations peoples. As you may have seen this week, the Productivity Commission's latest review of the National Agreement on Closing the Gap warns that we are still far from achieving the desired outcomes.

Let me close by thanking each of you once again for the exceptional contribution made by the BLS and wish you the best for a successful planning workshop.

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.