Law Council
OF AUSTRALIA

Inquiry into Surrogacy

House of Representatives Standing Committee on Social Policy and Legal Affairs

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GPO Box 1989, Canberra
ACT 2601, DX 5719 Canberra
19 Torrens St Braddon ACT 2612

Telephone **+61 2 6246 3788**
Facsimile +61 2 6248 0639

Law Council of Australia Limited
ABN 85 005 260 622
www.lawcouncil.asn.au

1. Thank you for the opportunity to provide submissions with respect to the Inquiry's Terms of Reference.

2. The Law Council is the national peak body for the legal profession. Further information about the Law Council is at **Attachment A**.

3. This submission has been prepared by the Law Council's Family Law Section (FLS). The Family Law Section is the largest professional association for family law practitioners, with a membership of almost 2,500 from all Australian States and Territories together with a number of international members. It exists to positively influence the development and practice of family law for the benefit of its members and the general community, and to promote professional excellence and influence decision making, so that the family law system in Australia is fair, respected, functional and responsive to community needs.

4. This submission addresses each of the Terms where relevant to the expertise of the Family Law Section.

> *Term of reference 1: the role and responsibility of states and territories to regulate surrogacy, both international and domestic, and differences in existing legislative arrangements*

5. To assist the Committee the FLS has provided the following material:

   (a) 2009 Submission to the Standing Committee of Attorneys-General, Australian Health Ministers' Conference, Community and Disability Services Ministers' Conference Joint Working Group with respect to the then proposed national model for regulation of surrogacy (**Attachment B**):
   (b) 2013 Submission to the Family Law Council: Part VII Who is to be considered a parent (**Attachment C**);
   (c) 2015 media release (**Attachment D**);
   (d) 2016 comments provided by the Law Institute of Victoria (**Attachment E**).

6. The link to the Family Law Council's report on parentage is: https://www.ag.gov.au/FamiliesAndMarriage/FamilyLawCouncil/Documents/family-law-council-report-on-parentage-and-the-family-law-act-december2013.pdf

7. Rather than simply repeating what is already contained in those papers, this submission provides an overview of recent *Family Law* cases[1], which highlight the differences in approaches.

8. Consequently, when regard is had to those differing approaches, it ought be unsurprising that FLS supports a harmonization of laws as being an optimal outcome, whether that be by referral of powers, some sort of model legislation for consideration by States, or other mechanism creating consistency. Further, the differing statutory schemes around the nation for altruistic surrogacy is not ideal.

9. The recent decisions of the Family Court illustrate the challenges faced by that Court in determining practical issues raised in relation to children born of commercial surrogacy arrangements.

10. *Ellison and Anor & Karnchanit [2012] FamCA 602*, a decision of Justice Ryan delivered on 1 August 2012 concerned an application by Mr Ellison and his wife, Ms Solano, for orders that they have shared parental responsibility for children born in Thailand as a result of a commercial surrogacy arrangement, and that the children live with them. The Court also considered the making of a parentage order in favour of the biological father, Mr Ellison.

11. Ms Solano had suffered from cancer, and her treatment made her infertile. Mr Ellison and Ms Solano paid Ms Karnchanit, a Thai citizen, $7,350 to be their surrogate mother. Mr Ellison's sperm was used to fertilise an egg provided by an unknown donor chosen by a Thai fertility clinic, with the resultant embryos implanted into Ms Karnchanit.

12. Ms Karchanit, in accordance with her agreement with Mr Ellison, relinquished the two children born as a result of the surrogacy to Mr Ellison and Ms Solano immediately on their birth. Mr Ellison was named as the children's father on their Thai birth certificates. Ms Karchanit also entered into a Parenting Plan purporting to relinquish her parental responsibility in the favour of the applicants, and consented to the orders sought in the Family Court. On 18 March 2011 Mr Ellison and Ms Solano brought the two eight week old children from Thailand to Australia.

13. Her Honour held that by operation of the *Status of Children Act 1978 (Qld)*, only Ms Karnchanit was a legal parent of the children. It was necessary therefore for Mr Ellison to produce evidence of DNA tests to confirm that he was the biological father before a parentage declaration in his favour could be made and he was ultimately able to do so.

[1] *Ellison and Anor & Karnchanit [2012] FamCA 602*, *Dudley & Chedi* [2011] FamCA 502, *Mason & Mason and Anor* [2013] FamCA 424, *Bernieres and Anor & Dhopal and Anor* [2015] FamCA 736

14. Ryan J noted that declaration of parentage would have a wider reach than parenting orders and, importantly, that such a declaration survives the child's minority. Such an order would recognise that Mr Ellison was their biological father and would ensure the children were recognised as Australian citizens.

15. Limited evidence was initially provided by the Applicants in an attempt to conceal the fact that the children were born as a consequence of an illegal commercial surrogacy arrangement. Ryan J granted each applicant immunity by a certificate issued pursuant to s128 of the *Evidence Act 1995* (Cth) to enable them to produce evidence (such as in relation to paternity) free from fear that the evidence would be used against them in other courts.

16. Ryan J held that because of the stance adopted by Ms Karnchanit (the birth mother) in seeking no involvement with the children, the presumption that it is in the children's best interests for Mr Ellison and Ms Karnchanit to have equal shared parental responsibility was rebutted. Ryan J confirmed the best interests remained the paramount consideration and was of the view that it was important that in the children's daily lives they be cared for by people with not only the intention but also the legal authority to make decisions about their care. Accordingly, her Honour was satisfied that it was in the children's best interests that Mr Ellison and Ms Solano have parental responsibility for the children, and that express orders be made that the children live with them.

17. Ryan J also noted that it is an important principle in the *United Nations Convention on the Rights of the Child* that children be protected against discrimination on the basis of the status of their parents, legal guardians and family members. While that isn't a free standing right, it informs the way in which the best interest principle can be applied, and her Honour was satisfied that if Mr Ellison was not recognised as being the parent of the children, there was potential for that situation to impact other rights of the children.

18. Accordingly her Honour Ryan J made orders that:

- Mr Ellison be declared a parent of the children;
- Mr Ellison and Ms Solano have shared parental responsibility for the children;
- The children live with Mr Ellison and Ms Solano.

19. The case, determined with the benefit of submissions from the Australian Human Rights Commission, sets out useful guidelines in relation to the need for a high level of rigor to be imposed to ensure the court is satisfied that the birth mother has not been exploited and consents to the orders sought.

20. The approach in *Ellison* differed from that taken by Watts J in *Dudley & Chedi* [2011] FamCA 502 in which his Honour declined to make a finding for a declaration of parentage in relatively similar factual circumstances. In that case:

- Two children were born of Thai surrogacy arrangements using the Applicant Father's sperm, donor eggs and an unrelated surrogate. A third child, conceived using identical genetic material, was born to a different surrogate, on the same day as the subject children. By the time the matter came before Watts J, Stephenson J had made orders, including a declaration for parentage, parental responsibility and express orders as to with whom the children were to live (*Dennis and Anor & Pradchapet* (2011) FamCA 123);
- The applicable state law made the act of commercial surrogacy, and therefore the applicant's conduct, illegal;
- There was at that time no provision in state law that allowed recognition of any relationship between the children and the applicant;
- Had the surrogacy been altruistic, there was provision in the state law that would allow recognition with respect to the applicant's parentage of the children;
- The applicant could seek a remedy through adoption;
- The parenting orders sought (for joint responsibility and for the children to live with the Applicants) could be, and were, made without recognising the first applicant as the father of the children; and
- Watts J noted that counseling as required by s65G of the *Family Law Act* (where orders are proposed to be made in relation to a non-parent) would be futile and unnecessary.

21. While the facts of *Dudley & Chedi* and *Ellison* are similar, in *Ellison*, the approach taken by Ryan J was quite different. Ryan J noted that while adoption was a remedy available to the applicants pursuant to section 92 of the *Adoption Act 2009 (Qld)*, they would be unable to apply for adoption of the children until such time as the children had been living with the applicants for 3 years. Ryan J also made reference to *G v H* (1994) 181 CLR 387 in which it was said, with respect to a declaration of parentage, that *"such a finding may well be of the greatest significance to a child in establishing his or her lifetime identity"*. Ryan J was otherwise of the view that she was unable to place greater weight on public policy considerations of the type discussed in *Dudley & Chedi* than on the children's best interests.

22. Ryan J had cause to revisit the issue of parentage declarations in the matter of *Mason & Mason and Anor* [2013] FamCA 424. In that case two children were born to a surrogate mother in India using a donor egg and the sperm of the First Applicant. The children acquired Australian citizenship by descent (following the provision of DNA test results to the relevant Australian authorities) and held Australian Passports.

23. The Applicant, and his partner sought parenting orders and a declaration of parentage in favour of the Applicant. Orders were made for the applicants to have joint parental responsibility and for the children to live with them.

24. In refusing to make the declaration of parentage as sought, Ryan J had regard to the provision of s60H (dealing with children born as a result of artificial conception) and s60HB (dealing with children born under surrogacy arrangements) of the *Family Law Act* and noted the existence of two separate, but related, provisions. Her Honour concluded that the existence of the two separate sections reflected an intention on Parliament's behalf to ensure that the transfer of parentage for children born under surrogacy arrangements is made by the courts of the States and Territories.

25. In an approach that differs from that adopted in *Karcharnit*, and which ultimately resulted in a vastly different practical outcome for children whose conception was essentially the same, her Honour concluded (at 34)

> Unless an order is made in favour of the applicant pursuant to the Surrogacy Act [NSW], the provisions of the [Family Law] Act do not permit this Court to make a declaration of parentage in his favour. Thus, on reflection, I am inclined to respectfully agree with Watts J in *Dudley and Anor & Chedi …* that ultimately state law will govern the determination of parentage … and that state law will be recognised by Federal Law.

26. The issue of the Court's capacity to make declarations of parentage was considered most recently by Berman J in *Berniers and Anor & Dhopal and Anor* [2015] FamCA 736. The parties brought a child, born of an international commercial surrogacy agreement with the sperm of the second respondent and an anonymous egg donor, to Australia in 2014. The parties sought parenting orders and a declaration of parentage (including in favour of the first applicant who was not biologically related to the child).

27. The child was brought to Australia following the issuing of an Australian passport and a Certificate of Citizenship by Descent following provision of proof that the child was the biological father of the child. Given the nature of the commercial surrogacy arrangement Berman J concluded that the child was not one to whom s60HB of the *Family Law Act* applied – no orders having been made (or able to be applied for) pursuant to s22 of the *Status of Children Act 1974* (Vic).

28. A declaration of parentage pursuant to s69VA was sought in favour of the First Applicant who was not the biological progenitor of the child. Berman J concluded that s69VA is "*not a stand-alone power but requires parentage of a child to be in issue in proceedings in respect to another matter [and] … is limited by the fact that the court can only make a declaration if it finds that a person is a biological progenitor*" (at 78). No declaration was made. His Honour also concluded that the Family Court does not, by virtue of it being a Superior Court of Record, have any inherent power to grant the declaration as sought. In addition, his Honour rejected

submissions made on behalf of the Applicants that s67ZC could be interpreted as conferring on the court power to make a declaration of parentage (pursuant to s69VA) in relation to " a child of the marriage".

29. In refusing to grant a declaration of parentage, and noting that unlike in NSW (where Ryan J had determined *Mason*) or Queensland (where Watts J had determined *Chedi*) commercial surrogacy is not illegal in Victoria, his Honour observed:

> It may be that legislation has not kept pace with the reality of international surrogacy arrangements but equally, it cannot be assumed that the only approach is to revert to the biological connection as an alternative definition of "parent". (at 125)

30. In perhaps the most concise summary of the shortcomings of bringing applications for parentage declarations pursuant to the *Family Law Act*, his Honour noted:

> [120] Clearly the circumstances surrounding the birth of Q are not dealt with directly either by the relevant state legislation or by reference to s60HB of the Act. It may well be an unsatisfactory position that children who are born pursuant to a commercial gestational overseas surrogacy arrangement are not acknowledged by either state or Commonwealth legislation.
>
> [121] I am not satisfied however that the definition of a parent should be extrapolated because of a legislative vacuum.

31. The need for consistency ought to be plain.

Term of reference 2: medical and welfare aspects for all parties involved, including regulatory requirements for intending parents and the role of health care providers, welfare services and other service providers

32. Term of reference 2 is not a matter within the expertise of the FLS, save that in its 2009 submission (at page 3, point 7) the FLS took the view that:

> FLS proposes that the requirements for surrogacy be supervised by accredited service providers who can demonstrate the appropriate medical and psychological expertise. It may be that the current ART clinics are best placed to take the responsibility.

33. That view remains the position of FLS.

34. Equally, in that same 2009 submission FLS said that the process had to be simple, transparent and relatively straightforward or people would simply circumvent them (at page 3 point 6). Later in that submission, FLS expressed the firm view that:

- A declaration of parentage ought not be discretionary if all statutory requirements had been met; (at point 25) and
- Counselling post birth ought not be mandatory (at point 21); and

- There ought not be a panel or Board which determines who can or cannot be a parent (at point 43).

35. Those views remain the position of FLS.

> *Term of reference 3: issues arising regarding informed consent, exploitation, compensatory payments, rights and protections for all parties involved, including children*

36. Again, term of reference 3 is not a matter within the expertise of FLS, save to say that any decision-making process must have a paramountcy principle as to the best interests of the child built into the decision-making framework.

> *Term of reference 4: relevant Commonwealth laws, policies and practices (including family law, immigration, citizenship, passports, child support and privacy) and improvements that could be made to enable the Commonwealth to respond appropriately to this issue (including consistency between laws where appropriate and desirable) to better protect children and others affected by such arrangements*

37. The comments on this Term of Reference relate only to knowledge of Family Law matters. The FLS offers no views on immigration, citizenship, passports and privacy, as these are not matter within its expertise. The submission below, ought to be read in conjunction with the comments above in relation to Term of Reference 1.

38. It is important to note that the concept of parentage for the purposes of the *Family Law Act* does not necessarily or always equate to other concepts such as paternity, maternity, and/or citizenship.[2]

39. Further, persons wishing to be declared a parent do so because of the impact non-recognition might have in areas such as:

- Medical treatment for the child;
- Registering with Medicare and health funds;
- Applications for things such as passports or school that require a birth certificate specifying the child's parents;
- Rights for a child arising upon the death of a parent, including rights to an intestacy and superannuation;
- The ability of a child to be referred to as "a child" in a will; and
- Complications in relation to recognition as to entitlements and liabilities under the child support regime and recognition of a child's rights to

[2] *Mason & Mason and Anor* [2013] FamCA 424per Ryan J at 15 ff

entitlements on injury or death of a parent in schemes of workers' compensation.[3]

40. Parentage is furthermore a concept with profound implications for both parent and child – it establishes and reinforces identity with family and culture. It is a legal declaration surviving a child's minority.[4]

41. Many people who are involved in the care of a child conceived through surrogacy arrangements, and who have not been declared a "parent" under one of the state laws, seek a declaration as to parentage from a federal court. Litigants do this because of a disqualifying factor – most typically, the fact that the child was born pursuant to a commercial surrogacy arrangement and thus the parties have done something illegal. This has caused considerably difficulties for first instance judges, and as noted earlier, has resulted in different judicial approaches being adopted. It causes problems with evidence and disclosure.

42. Subdivision D of Part VII of the *Family Law Act* sets out how the Act applies to certain children, including children born as a result of artificial insemination procedures (section 60H) and children born under surrogacy arrangements (section 60HB).

43. Section 60HB states:

> Children born under surrogacy arrangements
> (1) If a court has made an order under a prescribed law of a State or Territory to the effect that:
> (a) a child is the child of one or more persons; or
> (b) each of one or more persons is a parent of a child;
>
> then, for the purposes of this Act, the child is the child of each of those persons.
>
> (2) In this section:
> *"this Act"* includes:
> (a) the standard Rules of Court; and
> (b) the related Federal Circuit Court Rules.

44. "Prescribed Laws" are to be determined by reference to reg 12CAA of *the* *Family Law Regulations* 1984 which provide that for the purposes of s60HB(1) the following laws are prescribed:

- *Status of Children Act* 1974 (VIC), section 22.
- *Surrogacy Act* 2010 (QLD), section 22.
- *Surrogacy Act* 2008 (WA), section 21.
- *Parentage Act* 2004 (ACT), section 26.
- *Family Relationships Act* 1975 (SA), section 10HB.

[3] See *Dudley and Anor & Chedi* [2011] FamCA 502 per Watts J at 22.
[4] *Ellison and Anor & Karnchanit* [2012] FamCA 602 per Ryan J at 101.

- *Surrogacy Act* 2010 (NSW), section 12.
- *Surrogacy Act* 2012 (TAS), section 16[5]

45. Parliament's intention, save for the very narrow scope of s69VA of the *Family Law Act*, was that findings of parentage should be a matter for the states. It appears to be the intention of Parliament (although this is not definitely settled – see citation below) that in respect of surrogacy, unless an order has been made pursuant to one of the Acts enumerated above in favour of an applicant, the federal court cannot make a declaration as to parentage.[6] If that is the case, then Australian children and their parents will be treated differently, and have to refer their matter to a different jurisdiction, depending on which state law they are subject. It is worth considering whether it is in the best interests of children to differentiate between the jurisdiction applicable to them, depending on the circumstances of their birth.

46. Forum shopping becomes an obvious concern due to the inconsistencies between different state legislation. For example, in the recent decision of Berman J in *Crisp & Clarence* [2015] FamCA 964 (9 November 2015), his Honour observed at #50:

> It is possible that the relevant state legislation is either Queensland being the state in which the child was conceived or South Australia being the state in which the child was born.

47. Accordingly, that litigation (and factual matters examined at trial) was necessarily run on three different factual bases: the *Family Law Act* and the two, differing state Acts. This of course, added time and expense to the litigation.

48. The inconsistency is unhelpful. That different results can occur in different states is, from a child's best interest's perspective, bordering on arbitrary and capricious.

49. In all Australian States, obtaining a benefit from a commercial surrogacy arrangement is an offence. Three States go further[7] and have made it an offence for residents to enter into international commercial surrogacy arrangements. Some allow same sex couples to enter into surrogacy arrangements, some put a lower age limit on the surrogate mother and some prescribe whether the surrogate mother must have had a child before; thus, some arrangements that are capable of leading to an order that a person is a "a parent" of a child is possible in some states but not others. In a recent case where a commercial surrogacy arrangement from Victoria was the subject of proceedings, the trial judge held:[8]

> In circumstances where the state legislation is silent with respect to the determination of parentage

[5] The Northern Territory has no prescribed surrogacy laws which means that commercial surrogacy (in particular international arrangements in which local IVF Clinics have no role) is not explicitly proscribed.
[6] Mason & Mason and Anor [2013] FamCA 424 per Ryan J at 34.
[7] ACT, Queensland and NSW
[8] *Green-Wilson & Bishop* [2014] FamCA 1031 per Johns J at 44

> of children born of commercial surrogacy procedures (which are not prohibited in Victoria), I am satisfied that it is appropriate to make a declaration with respect to a child born of such procedures who is now living in Victoria. To do otherwise would be to elevate public policy considerations (as to the efficacy or otherwise of commercial surrogacy arrangements) above a consideration of the welfare of children born of such arrangements. In my view, the interests of the child must outweigh such public policy considerations.

50. Conversely, and as noted above, in an earlier case, Watts J declined to make a parentage order "*notwithstanding the possible advantages to [the childre*n]" because the surrogacy arrangement was a commercial one and thus a criminal offence in the relevant State, and, because there was no state law which could have recognized the applicants' parentage.[9]

51. Section 69VA enables caregivers of a child to seek a declaration of parentage in some cases, but, it is not a free standing power, and, the declaration must result from parentage testing. It is clearly expressed to be dependent upon there being proceedings before the court in which the parentage of the child is already an issue. So, for example, if the parties seek a declaration of parentage for purposes of obtaining a passport – and, for example, because they are happily together they seek no other orders – then the section cannot be the basis for a parentage declaration. Although the Family Court is a superior court of record it has no inherent declaratory power.[10]

52. The discrepancy at first instance of application or otherwise of section 69HB of the *Family Law Act* to Australian children, depending on how they came into being and which State their caregivers live in, cannot be said to be in their best interests. In the context of the creation of families and the nurturing of children, it is fundamental that the law is capable of relatively consistent application and its function and purpose is clear. Either children who do not fit the state definition can get in "through the back door" via the *Family Law Act* and its paramountcy principle of the best interests of the child; or they ought to properly be the focus of adoption process; or consideration ought to be given to the recognition and regulation of commercial surrogacy arrangements.

Term of reference 5: Australia's international obligations

53. Australia has obligations at international law having ratified both *the Convention on the Rights of the Child,* and the *International Covenant on Civil and Political Rights* (ICCPR).

54. The FLS also contends that our ratification of the *International Covenant on Economic, Social and Cultural Rights* provides an additional bundle of rights and

[9] Dudley and Anor & Chedi [2011] FamCA 502 per Watts J at 32.
[10] *Bernieres and Anor & Dhopal and Anor* per Berman J at 79 (in respect of the passport reasoning) and 90 (regarding the inherent power to make a declaration)

obligations relevant to an analysis of Australia's international obligations in the area of surrogacy. Article 10 is apposite:

Article 10

The States Parties to the present Covenant recognize that:

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.

2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.

3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

55. All children, no matter how born, ought to have the protection of these rights. Equally, it could not be justified that a "mother" or child, by dint of birth arrangement is excluded from these rights.

56. The FLS also draws the Committee's attention to the Convention on the Reduction of Statelessness[11], which Australia ratified on 13 December 1974.

Article 1:
A Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless. Such nationality shall be granted:
(a) at birth, by operation of law, or
(b) upon an application being lodged with the appropriate authority, by or on behalf of the person concerned, in the manner prescribed by the national law. Subject to the provisions of paragraph 2 of this Article, no such application may be rejected.
...

Article 7:
3. Subject to the provisions of paragraphs 4 and 5 of this Article, a national of a Contracting State shall not lose his nationality, so as to become stateless, on the ground of departure, residence abroad, failure to register or on any similar ground.

57. These Articles are relevant in considering international commercial surrogacy and issues of citizenship under terms of reference 4, 5 and 8. Additionally, there is an intersection with the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography[12].

58. Returning more specifically to internal law, the FLS refers the Committee to a very helpful article produced by the Human Rights Law Centre in 2015, which can be

[11] http://www.unhcr.org/3bbb286d8.html
[12] http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPSCCRC.aspx

found at: http://hrlc.org.au/regulating-surrogacy-in-australia/[13]

Term of reference 6: the adequacy of the information currently available to interested parties to surrogacy arrangements (including the child) on risks, rights and protections

59. Term of reference 6 is not a matter within the expertise of the FLS.

Term of reference 7: information sharing between the Commonwealth and states and territories

60. Respectfully, the FLS is unsure as to the point or context Term of Reference 7. As a general proposition, relevant information sharing, with appropriate security and identity safeguards between jurisdictions may be beneficial, but only so long as such information sharing does not amount to the collection of information about private citizens in an impermissible way simply because they are making a perfectly reasonable *inter partes* application which ought to remain private.

Term of reference 8: the laws, policies and practices of other countries that impact upon international surrogacy, particularly those relating to immigration and citizenship

61. Term of reference 8 is not a matter within the expertise of the FLS.

62. We thank the Committee for the opportunity to contribute to its inquiry and the Council's Family Law Section would be happy to discuss any aspects of this submission.

Yours faithfully,

S Stuart Clark AM
PRESIDENT

[13] Retrieved 30.1.16

Attachment A: Profile of the Law Council of Australia

The Law Council of Australia exists to represent the legal profession at the national level, to speak on behalf of its Constituent Bodies on national issues, and to promote the administration of justice, access to justice and general improvement of the law.

The Law Council advises governments, courts and federal agencies on ways in which the law and the justice system can be improved for the benefit of the community. The Law Council also represents the Australian legal profession overseas, and maintains close relationships with legal professional bodies throughout the world.

The Law Council was established in 1933, and represents 16 Australian State and Territory law societies and bar associations and the Law Firms Australia, which are known collectively as the Council's Constituent Bodies. The Law Council's Constituent Bodies are:

- Australian Capital Territory Bar Association
- Australian Capital Territory Law Society
- Bar Association of Queensland Inc
- Law Institute of Victoria
- Law Society of New South Wales
- Law Society of South Australia
- Law Society of Tasmania
- Law Society Northern Territory
- Law Society of Western Australia
- New South Wales Bar Association
- Northern Territory Bar Association
- Queensland Law Society
- South Australian Bar Association
- Tasmanian Bar
- Law Firms Australia
- The Victorian Bar Inc
- Western Australian Bar Association

Through this representation, the Law Council effectively acts on behalf of more than 60,000 lawyers across Australia.

The Law Council is governed by a board of 23 Directors – one from each of the constituent bodies and six elected Executive members. The Directors meet quarterly to set objectives, policy and priorities for the Law Council. Between the meetings of Directors, policies and governance responsibility for the Law Council is exercised by the elected Executive members, led by the President who normally serves a 12 month term. The Council's six Executive members are nominated and elected by the board of Directors.

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- Ms Fiona McLeod SC, President-Elect
- Mr Morry Bailes, Treasurer
- Mr Arthur Moses SC, Executive Member
- Mr Konrad de Kerloy, Executive Member
- Mr Michael Fitzgerald, Executive Member

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