The State of the Australian Judicature in 2025

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In his second "The State of the Australian Judicature" address, delivered at the opening of the Australian Legal Convention held at the High Court in November 2025, Chief Justice Gageler explains the purpose of the Convention as being to facilitate dialogue between the many parts of the Australian legal system on the contemporary challenges facing the system and the potential for coordinated responses. Chief Justice Gageler introduces the main themes to be explored throughout Convention, including: public confidence in the judicature; the use of artificial intelligence in the legal system; First Nations justice; access to justice; responses to family and sexual violence; the well-being of the judicature, practitioners, academics and students; and the future of legal education and training.

This is the second address I have given entitled "The State of the Australian Judicature". In "The State of the Australian Judicature in 2024",[1] I engaged in a stock-take. I defined the contemporary "Australian Judicature" in functional terms to include Commonwealth, State and Territory courts together with Commonwealth, State and Territory civil and administrative tribunals of general jurisdiction. I located the contemporary Australian Judicature so defined within the contemporary Australian legal system, which I explained to include the Australian legal profession and the Australian system of legal education. I catalogued some of the many groups and entities that are involved in the governance and functioning of the contemporary Australian legal system as so explained.

At the conclusion of "The State of the Australian Judicature in 2024", with the authority of the Council of Chief Justices of Australia and New Zealand ("CCJ") and with the agreement of the current members of the High Court of Australia, I announced a proposal to hold an event designed to bring together representatives of the greater part of those groups and entities involved in the governance and functioning of the contemporary Australian legal system to engage in dialogue with a view to identifying current and emerging challenges and exploring the prospect of co-ordinated responses. The proposal was that the event was to be known as the "Australian Legal Convention" ("ALC") and was to be held at the High Court building in Canberra.

With effort and goodwill on the part of organisers and participants alike, what was proposed in 2024 has come to pass in 2025. More than 250 representatives of organisations concerned with the governance and functioning of the Australian Judicature, the Australian legal profession and the Australian system of legal education now gather at the Australian Legal Convention in Courtroom No 1 of the High Court building. The venue and the name of the event have been chosen in part for their symbolism. The name of the event harks back to the 1930s, when my predecessor Sir John Latham chaired the inaugural "Australian Legal Convention" convened by the Law Council of Australia in 1935.[2] The common link between the name of the event and the venue is another of my predecessors, Sir Garfield Barwick.

As Chief Justice of Australia, Barwick delivered the inaugural "The State of the Australian Judicature" address at the 19th Australian Legal Convention then also convened by the Law Council of Australia

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* Chief Justice of Australia. This is an edited version of an address delivered at the commencement of the Australian Legal Convention held under the auspices of the Council of Chief Justices of Australia and New Zealand at the High Court building in Canberra on Friday 21 November 2025. The content of the address was produced with assistance from Kate Renehan and Tristan Taylor.

[1] Stephen Gageler, "The State of the Australian Judicature in 2024" (2024) 98 *Australian Law Journal* 885.

[2] Robert French, "Cause for Celebration: Law Council of Australia 75th Anniversary Dinner" (Speech, 19 September 2008) at 2. See also Barry Virtue, "The Australian Legal Convention: Where it Began, Where it's Going" (1990) 25(2) *Australian Law News* 11.

in 1977.[3] Barwick had earlier advocated for and overseen the choice of the design of this building to be the permanent seat of the High Court. Important to him was that the building be located at the constitutionally designated Seat of Government of the Commonwealth within the parliamentary triangle in Canberra. By the time he gave the inaugural address, the building was under construction. Three years later, he presided over its opening. Delivering an address entitled "The State of the Australian Judicature" at an event known as the "Australian Legal Convention" in the High Court building continues and develops Barwick's vision.

Barwick's vision, like that of his immediate predecessor Sir Owen Dixon,[4] was of a nationally integrated Australian judicial system with the High Court at its apex forming, as Dixon had put it, a "unit in judicial administration". The vision was incapable of realisation without the severing of ties to the courts of the United Kingdom through the abolition of appeals from Australian courts to the Judicial Committee of the Privy Council. That was ultimately to occur nine years after delivery of Barwick's inaugural address and six years after the opening of the High Court building with the enactment, by the Commonwealth Parliament at the request of each State Parliament, of the *Australia Act 1986* (Cth). Later that same year, the High Court clarified its effect to have been that the precedents of other legal systems were no longer binding on Australian courts,[5] paving the way for the Australian judicial system to come into existence as a unit in judicial administration in doctrine and in practice.

The preamble to the Australian Constitution describes it as the result of the agreement of the Australian people to "unite in one indissoluble Federal Commonwealth". The design and the chosen site of the High Court building were conceived of and have become concrete manifestations of the place within the national system of representative and responsible government created and sustained by the Australian Constitution of the nationally integrated Australian Judicature which now exists.

The architectural brief for the High Court building specified that the building was to be "visually related to the Parliament" but was to be "seen to stand separate from, and independent of, the Parliament", exerting a "powerful influence within this relationship" in "its constitutional independence, its objectivity of deliberation and [its] freedom from political influence". "[T]he essence of the physical symbolism [to be] achieved", said the brief, was "[a]n expression of both the unity of purpose and the independence of status".[6] The building faithfully constructed to that brief has now stood for 45 years – more than one third of our nation's history – as an "architectural expression" through which the law in and now of Australia has designedly been made "visible, relevant, and accessible to the public".[7]

That perspective on the High Court building through the lens of the national system of representative and responsible government created and sustained by the Australian Constitution is enhanced by recognising that the land on which it is built has been inhabited for tens of thousands of years and that the traditional owners of that land have had their own laws and customs from time immemorial. Respecting those and other traditional laws and customs throughout Australia can only strengthen the ability of the Australian Judicature to serve the Australian community.

Constituted thirteen years after the opening of the High Court building and seven years after the enactment of the *Australia Act*, the CCJ has since 1993[8] comprised the Chief Justices of Australia and New Zealand together with the Chief Justices of each of the Australian States and Territories and the Chief Justices of the Federal Court of Australia and what is now the Federal Circuit Court and Family

[3] Garfield Barwick, "The State of the Australian Judicature" (1977) 51 *Australian Law Journal* 480.

[4] "Swearing in of Sir Owen Dixon as Chief Justice" (1952) 85 CLR xi, xiii.

[5] *Cook v Cook* (1986) 162 CLR 376, 390.

[6] Edwards, Madigan Torzillo & Briggs Pty Ltd and Harry Howard & Associate, "The High Court of Australia Architects' Statement" (1980) 69 *Australian Architecture* 41 at 43.

[7] Goad, "Architecture of Court Building" in Tony Blackshield, Michael Coper and George Williams, *The Oxford Companion to the High Court of Australia* (Oxford University Press, 2001) 27 at 30.

[8] Murray Gleeson, "The state of the judicature" (2007) 14 *Australian Journal of Administrative Law* 118 at 124.

Court of Australia. The objects of the CCJ, as formally articulated in 2014 and as updated in 2024, include "[t]o advance and maintain the rule of law and the independence of the judiciary" and "[t]o advance and maintain the principle that Australian courts together constitute a national judicial system operating within a federal framework".[9] The responsibilities assumed and activities undertaken by the CCJ in pursuit of those objects have expanded over the 32 years of its existence. The ALC is its most ambitious project to date.

The ALC is the product of the recognition by the CCJ of the depth and diversity of the expertise and experience that is to be found within the many different parts which together comprise the Australian legal system and the belief of the CCJ that the system can be strengthened by encouraging conversation between them. Physical capacity has limited those able to be part of that conversation. Live streaming will enable the conversation to be freely observed by all who are interested.

Topics scheduled for consideration in the ALC have been chosen by the CCJ on the basis of those topics seeming to Chief Justices to be of pressing national importance. No topic is rigidly defined. Overlap between them is inherent in their subject matters. Ideas to emerge from discussions on one topic might well inform solutions to problems exposed by discussions on another topic. Hence the potential for the Australian Judicature, and more broadly the Australian legal system, to benefit from exploration of the topics together within the framework in a single national forum.

Having outlined the origin and ambition of the ALC, my purpose in delivering the balance of this address is to highlight aspects of the topics that have been chosen for consideration from the perspective of the Australian Judicature and to relate those topics to this time and this place. Neither do I seek to pre-empt, nor do I seek to constrain, the scope of the discussion on any of them.

LEGITIMACY

"The State of the Judicature" address delivered by my predecessor Sir Gerard Brennan in 1998 contained a profound and timeless statement of constitutional principle which I have quoted often and which I now quote again:[10]

> If we are to be governed by the rule of law, we must have a judicature to administer it. The characteristics of that judicature reflect the functions it is charged to perform. First, it must be a judicature that is and is seen to be impartial, independent of government and of any other centre of financial or social power, incorruptible by prospects of reward or personal advancement and fearless in applying the law irrespective of popular acclaim or criticism. Secondly, it must be a competent judicature; there must be judges and practitioners who know the law and its purpose, who are alive to the connection between abstract legal principle and its practical effect, who accept and observe the limitations on judicial power and who, within those limitations, develop or assist in developing the law to answer the needs of society from time to time. Thirdly, it must be a judicature that has the confidence of the people, without which it loses its ability to perform its functions. Fourthly, it must be a judicature that is reasonably accessible to those who have genuine need for its remedies.

The topic of legitimacy concerns the foundational truth that is embedded in the combination of those characteristics and that is highlighted in the third of them: that a judicature must have the confidence of the people it serves, without which it simply cannot function. The truth is that the maintenance of the rule of law in Australia depends not only on the existence of a competent, fair, accessible, independent and impartial Australian Judicature but on the perception of competence, fairness, accessibility, independence and impartiality on the part of Australian Judicature by the Australian people and by the legislative and executive branches of government who are elected to represent the Australian people. Judicial legitimacy, as I have put it in the past, "depends on the public understanding and respecting, the distinctiveness of the judicial function".[11]

The confidence and respect characteristically afforded to the Australian Judicature by legislative and executive branches of government in Australia were epitomised by an incident which occurred during

[9] The Council of Chief Justices of Australia and New Zealand, "Objects", Webpage accessible at <https://ccjanz.gov.au>.

[10] Gerard Brennan, "The State of the Judicature" (1998) 72 *Australian Law Journal* 33 at 33–34.

[11] Stephen Gageler, "Judicial Legitimacy" (2023) 97 *Australian Law Journal* 28 at 28.

The Tasmanian Dam Case,[12] one of the most urgent and politically contentious constitutional controversies in our national history, which was heard in this room in 1983. The resolution of *The Tasmanian Dam Case* came when judgment was delivered barely three weeks after the hearing. The orders then pronounced were in the form of answers to questions of law which had been reserved for the consideration of the High Court. The effect of those answers was that the Commonwealth legislation in issue operated validly to prohibit the completion of the construction by the Hydro-Electric Commission of Tasmania of a dam on the Franklin River. The answers, however, were not expressed in mandatory terms and had no coercive force. Immediately after the pronouncement of the orders, the Solicitor-General of Tasmania rose to say that the Hydro-Electric Commission and the State of Tasmania were prepared to offer undertakings to the Court to cease construction of the dam. The immediate response of the Chief Justice, Sir Harry Gibbs, was as follows:[13]

> I am rather surprised, Mr Solicitor, that it should be thought necessary to seek, or necessary to give, undertakings. I should have thought that once the effect of the Court's judgment is understood, it would be observed by those whose duty it is to observe it without the necessity for an undertaking.

The offer of the undertaking was withdrawn and the construction of the dam ceased without any further order. Executive non-compliance with the law as determined by a judgment of this or any other Australian court, whether or not in the form of a coercive order, was then and remains to this day unthinkable.

Not so elsewhere. No revelation is involved in observing that the past decade has seen a dramatic decline in public confidence in and respect for judicatures in many countries in many parts of the world, or in observing that this global decline has of late escalated. Nor is any revelation involved in observing that contributing to that global decline and its recent escalation have been global forces of truth decay and polarisation spurred on by the psychological, sociological and political effects of the transformation in information technology and methods of communication that has occurred since the advent of the internet. Australia is not immune from these global forces. How the Australian Judicature presents itself to the Australian people and how it properly conducts itself in its necessary interactions with the elected representatives of the Australian people must be cognisant of and sensitive to them.

The confidence and concomitant respect of the Australian people and their elected representatives in and for the Australian Judicature cannot and should not ever be taken for granted. Sir Anthony Mason, another former Chief Justice of Australia, was aware of this. He said that "the courts act at their peril if, by their actions and decisions, they set at risk public confidence in the courts".[14] Confidence is misplaced unless it is warranted, for and confidence to be warranted it must be continuously earned. How the confidence and respect of the Australian people and their elected representatives are to continue to be earned by the Australian Judicature in a rapidly changing world demands active consideration.

Artificial Intelligence

If the impact of changes to information technology on public confidence in the Australian Judicature has been indirect and evolving, the impact of generative artificial intelligence has been direct and immediate. Were this convention to have been held ten or even five years ago, AI would not even have been on the program. The launch of the first widely popularised and freely accessible generative AI model was only in late 2022. Indicative of the magnitude of the impact of AI since then is the fact that the topic of AI became a standing item on the CCJ agenda in early 2024.

To date, the focus of attention of the Australian Judicature has been primarily on the inappropriate use of AI in the preparation of evidence and formulation of submissions by litigants in person and legal practitioners. Following the pioneering example of New Zealand in 2023, practice directions concerning the use of AI in litigation have been promulgated in most Australian jurisdictions, some

[12] *Commonwealth v Tasmania* ("*The Tasmanian Dam Case*") (1983) 158 CLR 1.

[13] Transcript of Proceedings, *Commonwealth of Australia v Tasmania* ((1983) 158 CLR 1 Friday 1 July 1983, Brisbane) at 4.

[14] Sir Anthony Mason, "The Courts and Public Opinion" [2002] (Winter) *Bar News* 30 at 30.

more restrictive and prescriptive than others.[15] Increasing examples of AI being found to be used inappropriately by litigants in person[16] and legal practitioners[17] suggest, however, that we have entered an unsustainable phase in the prevalence of the use of AI in litigation in which members of the Australian Judicature are acting as human filters and human adjudicators of competing machine-generated or machine-enhanced arguments.

Inevitably, the focus of attention of the Australian Judicature is shifting to the potential to use AI within its own processes in the same way as the focus of attention of judicatures in many other countries is increasingly shifting in that direction.[18] That potential is the subject of a current reference to the Victorian Law Reform Commission.[19] Though there are reasons to proceed with caution in considering any application of AI, the apparent efficiency of AI holds the potential for its use to contribute significantly to the functioning of courts and tribunals especially within a system of civil justice that aspires to be just, quick and cheap.

Examination of the potential use of AI within decision-making processes of Australian courts and tribunals will inevitably involve questioning the extent of human involvement in traditionally human aspects of those processes. Inexorably, it will become both meaningful and important to answer questions the asking of which would have been inconceivable ten years ago.[20] What is the point of a human judge? Why and how much do we value the humanity of the law? Does, and if so, to what extent does maintaining the humanity of the law necessitate the exercise of human judgment?

These are existential issues. The need for the Australian Judicature to grapple with them is arising as the pace of development of AI is outstripping human capacity to assess and perhaps even to comprehend its potential risks and rewards. What is happening at speed to the Australian Judicature and more broadly within the Australian legal system is happening at speed in Australia and elsewhere in every field of human endeavour. Humanity itself seems to be undergoing a process of digital transformation. Law is but one part of it.

Whether the transformation is for better or for worse seems for the moment to be incapable of more than impressionistic and probabilistic appraisement. An opinion piece entitled "The AI Prompt that Could End the World" published in the *New York Times* only last month noted that a team of scientists at Stanford University had just announced that they had for the first time used AI to design a virus and likened the advent of AI in the 2020s to the discovery of nuclear fission in the late 1930s. "I think there is a good chance that things will turn out just fine", an incredibly young frontline Silicon Valley AI researcher is quoted as saying, "but I think there is also a good chance they will turn out extremely not fine".[21] In the uncertain meantime, the Australian Judicature has no option but to engage.

First Nations Justice

Nothing is new about the quest for First Nations justice or about the difficulties that have been encountered in achieving it. The conferral of legislative power on the Commonwealth Parliament as a result of the 1967 constitutional referendum reflected the aspiration of the Australian people that First

[15] Compare Supreme Court of New South Wales, "Practice Note SC Gen 23" (28 January 2025), Supreme Court of Victoria, "Guidelines for Litigants: Responsible Use of Artificial Intelligence in Litigation" (6 May 2024), Federal Court of Australia, "Notice to the Profession: Artificial Intelligence Use in the Federal Court of Australia" (29 April 2025); Supreme Court of Queensland, "The Use of Generative Artificial Intelligence (AI) Guidelines for Responsible Use by Non-Lawyers" (revised 15 September 2025); Supreme Court of Queensland, "Accuracy of References in Submissions" (24 September 2025).

[16] See, eg, *May v Costaras* [2025] NSWCA 178, [2]–[17].

[17] See, eg, *Director of Public Prosecutions v GR* [2025] VSC 490.

[18] *AI in judicial systems: promises and pitfalls - Report of the Special Rapporteur on Independence of Judges and Lawyers, Margaret Satterthwaite*, UN Doc A/80/169 (16 July 2025).

[19] Victorian Law Reform Commission, "Artificial Intelligence in Victoria's Courts and Tribunals: Terms of Reference" (9 May 2024).

[20] John Tasioulas, "The Rule of Algorithm and the Rule of Law" in Christoph Bezemek et al, *Vienna Lectures on Legal Philosophy Volume 3: Legal Reasoning* (Hart, 2023) 17.

[21] Stephen Witt, "The AI Prompt that Could End the World" (New York Times, 11 October 2025).

Nations justice might be achieved at the national level. The refusal of the Australian people in the 2023 constitutional referendum to accept the particular mechanism of "the Voice" cannot be taken to have denied that national aspiration.

Within the longstanding quest for First Nations justice at the national level, the Australian Judicature has had some role in resolving controversies in a manner that has redressed historical injustice and that has stimulated consequent legislative action. It was in this room that Eddie Mabo finally had his substantive case heard in 1991 and decided in 1992.[22] The immediate outcome was the rejection of the common law doctrine of terra nullius, which had prevailed since colonisation, and the substitution of common law recognition of native title understood as communal, group or individual rights and interests in relation to land or waters possessed under the traditional laws and customs of Aboriginal or Torres Strait Islander peoples.

The enduring consequence of that reorientation of common law doctrine was cemented through the enactment in 1993, and substantial amendment in 1996, by the Commonwealth Parliament of the *Native Title Act 1993* (Cth) pursuant to which native title so recognised by the common law came to be and remains protected by force of Commonwealth legislation. The preamble to the *Native Title Act* records the intention of the people of Australia "to ensure that Aboriginal peoples and Torres Strait Islanders receive the full recognition and status within the Australian nation to which history, their prior rights and interests, and their rich and diverse culture, fully entitle them to aspire".

Without detracting from the achievement of that belated judicial and legislative recognition and protection of native title, it needs to be acknowledged that the broader experience of Aboriginal and Torres Strait Islander peoples with the Australian Judicature, in particular with the criminal justice system, challenges contemporary notions of justice and human rights. As eloquently expressed in the Uluru Statement from the Heart in 2017, by reference to statistics that have not significantly changed since then, Aboriginal and Torres Strait Islander peoples "are not innately criminal people" yet their children "are alienated from their families at unprecedented rates" and their youth "languish in detention in obscene numbers".

Were First Nations justice no more than a matter of the contemporary Australian legal system being sensitive to the contemporary needs of nearly five per cent of the Australian population, First Nations justice would be an important topic for discussion. Against the background of historical injustice and having regard to the persistence of social indicators like those referred to in the Uluru Statement, striving to attain First Nations justice is nothing short of critical.

There is in this room knowledge and goodwill. If the time is ripe and there is a contemporary national legal antidote to the historical scourge of First Nations injustice, this convention provides an opportunity to explore it.

Access to Justice

Developing the theme expressed by Sir Gerard Brennan in the proposition that a judicature worthy of the Australian people must be "reasonably accessible to those who have genuine need for its remedies", another of my predecessors, Robert French, wrote in 2018:[23]

> Justice in our legal system is a work in progress. Equal justice is the aspiration that all people should have equal opportunities to exercise their rights and enjoy their freedoms according to law and to receive equal treatment in their interaction with our legal system and before our courts. Equal justice requires equality in access to justice – in access to information about the legal system and advice, support and, where necessary, representation.

Australia presents a unique challenge in this regard. Our population of 27.5 million people within a landmass of around 7.7 million square kilometres[24] puts us alongside Greenland and Mongolia as one

[22] *Mabo v Queensland (No 2)* (1992) 175 CLR 1.

[23] Robert French, "Foreword" in Law Council of Australia, *The Justice Project: Final Report* (August 2018) at 4.

[24] Australian Bureau of Statistics, "National, state and territory population, March 2025"; Geoscience Australia, "Australia's size compared".

of the least densely populated countries on earth.[25] Despite most of that population being concentrated in urban centres, equal justice demands that Australian courts and tribunals be accessible to all members of the Australian community, regardless of the remoteness of some aspects of Australian life.

Delivering equal justice in regional and remote Australia involves members of the Australian Judicature taking measures to reach and be reached by members of the Australian community in the most isolated parts of our country. Legal aid organisations, Aboriginal and Torres Strait Islander legal services, community legal services and regional police and prosecutors, together with other service providers that exist adjacent to the legal system, such as mental health providers, housing providers and social workers, provide often an indispensable link between people living in the most remote parts of our nation and access to justice.[26]

That is not to suggest that the challenges involved in attempting to ensure access to justice are confined to those attributable to the tyranny of distance. Compounding disadvantage, whether economic or otherwise, often presents barriers to people being able to readily and appropriately exercise their legal rights and seek out legal remedies, even in major cities. Members of marginalised groups can at times find navigating the legal system difficult without tailored assistance.

The proportion of litigants in person who appear across courts and tribunals in Australia, often but not always due to the inaccessibility of affordable or available legal representation, is a testament to the work that remains to be done in building a truly accessible Australian Judicature.[27] Unrepresented individuals put significant pressure both on the members and resources of the Australian Judicature and on other parties attempting fairly to participate in court and tribunal processes. The still small but growing number of sovereign citizens who engage with the Australian Judicature are an added source of pressure.

Problems of access to justice have long and often been discussed. That enduring solutions have been notoriously elusive is no reason to give up the work that remains in progress. In the wise and characteristically understated words of my immediate predecessor, Susan Kiefel, "[v]iews about how access to justice may best be achieved may have changed over time, but there can be no doubt that this goal continues to be worth pursuing".[28]

Family and Sexual Violence

Related to access to justice, but a vitally important topic in its own right, is how the Australian Judicature engages with family and sexual violence. In *Munda*,[29] six members of the High Court referred to "the long-standing obligation of the state to vindicate the dignity of each victim of violence, to express the community's disapproval of that offending, and to afford such protection as can be afforded by the state to the vulnerable against repetition of violence".

Allegations of family violence, understood to mean "violent, threatening or other behaviour by a person that coerces or controls a member of the person's family… or causes the family member to be fearful",[30] feature in the majority of the cases coming before the Federal Circuit and Family Court of Australia (Division 1) and Federal Circuit and Family Court of Australia (Division 2).[31] Matters involving family and domestic violence increasingly make up a significant proportion of matters heard in State and Territory courts, both in applications for protection orders and in the prosecution of family

[25] Encyclopedia Britannica, "List of Countries, Dependencies, and Territories by Population Density".

[26] See, eg, Law Council of Australia, *The Justice Project: Final Report* (August 2018).

[27] See Andrew Cannon, "There is No Rule of Law When You Cannot Afford It" (2025) 34 *Journal of Judicial Administration* 101.

[28] Susan Kiefel, "Pro bono work, legal aid and access to justice: some matters of history" (Speech, Law Council of Australia, 2023 National Access to Justice and Pro Bono Conference, 22 June 2023) at 11.

[29] *Munda v Western Australia* (2013) 249 CLR 600 at [54].

[30] *Family Law Act 1975* (Cth) s 4AB.

[31] Federal Circuit and Family Court of Australia, Family Violence Best Practice Principles (5th ed) at 1.

and domestic violence offences.[32]

The Australian Law Reform Commission ("ALRC"), in a report tabled in the Commonwealth Parliament in March, identified sexual violence as one of the most common and serious harms confronting Australian society and has long been overdue for critical reform.[33] Despite the alarming statistic that one in five women and one in 16 men over the age of 15 have experienced sexual violence, the confronting conclusion reached in the report is that our system of justice is neither supporting those who have experienced sexual violence to seek justice nor holding perpetrators to account.

Despite increased awareness of the pervasive and destructive impacts that family and sexual violence have on the Australian community, much family and sexual violence in Australia remains largely unreported. Those cases which do enter the justice system are complex and deeply traumatic for those involved. Part of this complexity lies in the recognition that violence takes a number of different forms. We no longer operate under the false belief that violence is a purely physical act. It extends to psychological, emotional or economic abuse and can include a course of conduct by one person aimed at dominating or exerting power over the other.[34] Courts have recognised the destructive effect of family violence on not only the immediate victim but also those who are exposed to the violence including, most relevantly, children.[35]

Meeting concern about the pervasiveness and insidiousness of family and sexual violence and the difficulty many complainants face in pursuing justice through the legal system has been seen in some ways to be in tension with upholding an accused's right to a fair trial.[36] Substantive and procedural reforms in many jurisdictions have sought to reconcile competing interests.[37] Yet, aspects of our adversarial processes can still seem to some to present daunting and even overwhelming hurdles to seeking justice for instances of family and sexual violence through the courts. The involvement of children, as complainants, witnesses or defendants, adds another layer of complexity.

Improving the response of the Australian Judicature to the challenge of family and sexual violence requires the involvement of the entirety of the Australian legal system. It is incumbent on us all to be aware of the problem and to be part of the solution to the extent we can.

INSTITUTIONAL WELL-BEING

In 1995, shortly before he became a Justice of the High Court and when he was President of the Court of Appeal of the Supreme Court of New South Wales, Michael Kirby published an article which he headed "Judicial Stress" and which he introduced with the sub-heading "An Unmentionable Topic".[38] Thirty years on, with the benefit of recent high quality research into the mental health of members of the Australian Judicature[39] and in the light of recent international focus on its importance, judicial stress is a topic that the Australian Judicature is finally prepared to acknowledge and address.

International context is provided by the General Assembly of the United Nations in March this year having noted the "Nauru Declaration on Judicial Wellbeing" adopted at the Regional Judicial Conference on Integrity and Judicial Well-being held in Nauru last year and having proclaimed

[32] See Australian Bureau of Statistics, *Recorded Crime – Offenders* (2023-2024 financial year).

[33] Australian Law Reform Commission, *Safe, Informed, Supported: Reforming Justice Responses to Sexual Violence* (Report 143, January 2025).

[34] Commonwealth of Australia, Attorney-General's Department, "National Principles to Address Coercive Control in Family and Domestic Violence" (2023).

[35] *Pascoe & O Keefe and Ors* [2018] FamCAFC 243, [46].

[36] See, eg, the concerns discussed in Natalia Antolak-Saper and Hannah MacPherson, "Vulnerable Witnesses and Victoria's Intermediary Pilot Program" (2019) 43 *Criminal Law Journal* 325 at 334, 336, 338.

[37] See, eg, Pts 4B, 5 and 6 of the *Criminal Procedure Act 1986* (NSW).

[38] Michael Kirby, "Judicial Stress" (1995) 13 *Australian Bar Review* 101.

[39] Carly Schrever, Carol Hulbert and Tania Sourdin, "The Privilege and the Pressure: Judges' and Magistrates' Reflections on the Sources and Impacts of Stress in Judicial Work" (2024) 31 *Psychiatry, Psychology, and Law* 327.

25 July each year to be the "International Day for Judicial Well-being".[40] The Nauru Declaration sets out a number of important propositions. Adopting and restating the first four of them in my own words, they are these. Judicial well-being is essential to ensuring a fair and effective justice system. Without it, judicial independence and public trust are at risk. Judicial stress and mental health challenges should be openly acknowledged. Experiencing challenges of that nature does not reflect weakness or lack of fitness to serve. Promoting judicial well-being is a collective responsibility – individual judicial officers and tribunal members must take action as must the institutions of which they form part. A supportive and inclusive culture is necessary. Institutions need to foster ethical environments that prioritise well-being.

The state of the Australian Judicature depends on the wellbeing of the two thousand or so individuals who comprise the Australian Judicature. Judicial officers and tribunal members are required to work hard and unrelentingly. It is in the nature of the work they do that they are required to work under constant media and public scrutiny. Many have experienced vicarious trauma as a result of cases with which they have been required to deal, including cases involving family or sexual violence. Many have experienced threats of physical harm. All are entitled to a safe system of work. Thirty years after Justice Kirby first mentioned the unmentionable topic, the question is not whether judicial stress is to be acknowledged but how it is to be addressed.

Institutional well-being is a topic that is larger than the well-being of the Australian Judicature. Its consideration is part of a larger conversation that needs to occur about the well-being of members of the Australian legal profession and of academics and students within the Australian system of legal education.

LEGAL EDUCATION AND TRAINING

The topic of legal education and training is appropriately dealt with last because it links the earlier topics together. To examine legal education and training is to see "the expression of basic attitudes about the law: what law is, what lawyers do, [and] how the [legal] system operates".[41]

There was a time when legal education and training were seen within the Australian legal system only as precursors to entry into legal practice. Now legal education and training are seen as necessary to meet an ongoing need for the Australian legal system to be adaptable to change.

A core purpose of tertiary legal education, which has remained constant since the University of Melbourne established Australia's first law course in 1857, is to provide students with the foundational legal concepts required to practice law. The foundational academic requirements of law students remain today largely unchanged since the drafting of the "Priestley 11" in the 1980s. Practical training in preparation for legal practice saw a shift in the 1970s from articled clerkships to institutionalised "Practical Legal Training" ("PLT"), designed to provide legal graduates with the essential practical skills required for a career in the law. The quality, efficacy and cost of PLT have recently come under scrutiny. Continuing legal education ("CLE") started to be required for Australian legal practitioners in the 1990s.

Education and continuing education for judges and tribunal members started to become available around the same time, boosted at the national level by the establishment in 2002 at the initiative of the Standing Committee of Attorneys-General on the recommendation of the Australian Law Reform Commission, of the National Judicial College ("NJCA"). In his "State of the Judicature" address in 1999 Chief Justice Murray Gleeson had expressed support for its creation, making the point that it was by then "no longer sufficient to assume that most persons appointed to judicial office" came from a background that "provided them with such information and experience as [was] necessary for the competent performance of judicial duties".[42] Nor, I now add, is it any longer sufficient to assume that

[40] *International Day for Judicial Well-being*, GA Res 79/266, UN Doc A/RES79/266 (4 March 2025).

[41] John Henry Merryman, "Legal Education There and Here: A comparison" (1975) 27 *Stanford Law Review* 859 at 859, cited in David Barker, *A History of Australian Legal Education* (Federation Press, 2017) at 239.

[42] Murray Gleeson, "The State of the Judicature" (1999) 73(12) *Law Institute Journal* 67 at 69–70

information and experience that are enough to ensure the competent performance of judicial duties at the beginning of a judicial career will remain enough to sustain the competent performance of those duties throughout a judicial career.

Meaningful appraisal of the present and future of legal education and training in Australia needs to cover the totality of the continuum. It needs to involve representatives of the Australian Judicature and the Australian legal profession. It needs to encompass overarching normative questions about what academics, practitioners, judicial officers and tribunal members each *should* do and how the Australian legal system as a whole *should* operate.[43] And it needs to descend to more fine-grained and pragmatic questions concerning *how* and *when* practitioners, judicial officers and tribunal members might optimally obtain, maintain and update the knowledge and skills needed at various stages of their careers.

The topic is peculiarly appropriate to be conducted under the auspices of the CCJ within the framework of the ALC, which has been organised with the assistance of the NJCA.

THE WAY AHEAD

That brings me to the end of "The State of the Australian Judicature in 2025" and to the start of our discussions.

Each of us here present at the ALC has chosen to be involved in the same ambitious project. We have assembled with diverse backgrounds and perspectives yet with a common purpose: collectively to pursue the goal of ensuring that the Australian Judicature, and the Australian legal system more broadly, responds to the contemporary challenges it faces in a way that best serves the Australian people.

When I was sworn in as Chief Justice in this room just over two years ago, I referred to a strength of our legal tradition being that the maintenance and development of legal principle within it depends less on legal theory than on accumulated experience. I referred to my own need, once installed at the apex of that system, to listen more than to speak.[44] My speaking now finishes. My listening now begins.

[43] Cf Professor Michael Coper, "What is the Future of Australian Legal Education" (2018) 92 *Australian Law Journal* 242 at 245.

[44] Ceremonial Sitting on the Occasion of the Swearing-in of the Chief Justice the Honourable Stephen John Gageler AC [2023] HCATrans 151.