

NATIONAL ADMINISTRATIVE LAW CONFERENCE 2026

Opening Remarks

The Hon Justice Michelle Gordon AC*

Canberra, 30 July 2026

Introduction

- 1 Thank you to the Australian Institute of Administrative Law for inviting me to deliver the opening remarks for this year's National Administrative Law Conference. It is a great privilege.
- 2 I acknowledge that we gather on the land of the Ngunnawal people. I recognise and celebrate their ongoing culture and contribution to this land. I pay my respect to their Elders, past and present, and to other First Peoples here today. That acknowledgement and giving of respect is important. It is a reminder of our history, and our shared future.
- 3 This year's theme, "**Administrative law in a time of crisis**", draws timely attention to critical challenges facing the practice of administrative law – for administrative decision-makers at the coal face, for tribunals tasked with reviewing decisions on their merits, for courts engaged in judicial review, and for other bodies who play a supervisory or oversight role in relation to government decision-making.
- 4 Australia's modern administrative law structures were built through substantial reforms in the late twentieth century – merits review, oversight bodies, and the maturation of judicial review principles.¹
- 5 But every structure is stress-tested by its conditions. Administrative law today is facing new structural pressures. This year's conference asks us to consider the implications of human action and inaction for the environment; the rights and participation of First Nations peoples; AI and automation in decision-making; and threats to democracy.
- 6 This year's conference turns a critical lens to them, and asks how they might shape our practice of administrative law. I want to suggest that the phrase "a time of crisis" does not require us to think of administrative law as being in crisis. Rather, it invites us to ask whether the ordinary disciplines of administrative law — legality, rationality, procedural fairness, reasons, transparency and review — are capable of doing their work under new and more demanding conditions. In my view, those disciplines are not less important in a time of crisis. They are more important.

Climate change litigation

- 7 Turning first to environmental challenges. As we grapple with the effects of climate change, people look to law to protect or preserve our collective desire for a sustainable future. Administrative decisions about planning approvals or resource extraction and regulation may all affect Australia's emissions. Whether decision-makers are required to consider such effects is often a question of administrative law.

* Justice of the High Court of Australia. I wish to acknowledge the assistance of Annie Jiang and Priam Rangiah in the preparation of this speech. Any errors are mine.

¹ See Creyke et al, *Control of Government Action: Text, Cases and Commentary*, 5th ed (2019) at 31 [1.4.2]; Groves, "Administrative law values – A response to Chief Justice Gageler" (2026) 56 *Australian Bar Review* 113 at 120-121. See also *Kioa v West* (1985) 159 CLR 550; *Minister for Aboriginal Affairs v Peko-Wallsend Ltd* (1986) 162 CLR 24; *Craig v South Australia* (1995) 184 CLR 153.

- 8 In May this year, the High Court heard what has been described as "Australia's first High Court climate case".² That case concerned an application for judicial review of a decision of the Independent Planning Commission of New South Wales to approve an application by the owner of a coal mine in New South Wales, to extend the life of the coal mine and expand its operations. That decision remains reserved. I will say nothing further about it.
- 9 What I can say is this: questions of sustainability and climate change will continue to reach decision-makers, tribunals, courts and other supervisory bodies. Those questions will inevitably concern statutory construction, evidence, the content of reasons given and the boundaries of lawful decision-making. In each setting, the first question remains deceptively simple: what is the statutory task?
- 10 The second question — who must be heard, and how — arises in a different but equally fundamental form in relation to *First Peoples' participation in public decision-making*.
- 11 Last year, Victoria became the first Australian State or Territory to sign a "Statewide Treaty" with First Peoples, and to introduce, pass and enact treaty legislation.³ Victoria's Treaty and its accompanying Act may lead to shifts in the political and legal framework.⁴
- 12 The Treaty and accompanying Act reimagine the processes of lawmaking and public administration to incorporate First Nations voices and consultation.⁵ The Act establishes a new representative and deliberative body, Gellung Warl, which evolved from the First Peoples' Assembly of Victoria.⁶ Gellung Warl comprises three main parts, each of which has certain functions and powers under the Act. How Gellung Warl interacts with Parliament, the Executive and administrative law processes may test our assumptions about participation, rights, and executive accountability. These developments raise administrative law questions of a distinctive kind. How do we understand the legal status of new deliberative or consultative bodies and their functions? How do courts, tribunals and oversight institutions approach review when statute builds in participation as part of the decision-making process?
- 13 Moving beyond Treaty, we might ask how increased First Peoples' participation in legislative and executive decision-making might promote accountability and democracy in decision-making. We might also ask: what other avenues are there for increased

² George, "Australia's first High Court climate case could reshape fossil fuel approvals" (*the point*, 8 May 2026) <<https://thepoint.com.au/news/260508-australias-first-high-court-climate-case-could-reshape-fossil-fuel-approvals>>. See also Scott et al, "Climate change in the High Court of Australia: Will a coal mine's contribution to climate change cause likely environmental impacts 'in the locality'?" (*Climate Law: A Sabin Center blog*, 6 May 2026) <<https://blogs.law.columbia.edu/climatechange/2026/05/06/climate-change-in-the-high-court-of-australia-will-a-coal-mines-contribution-to-climate-change-cause-likely-environmental-impacts-in-the-locality/>>.

³ Statewide Treaty between First Peoples' Assembly of Victoria Ltd and State of Victoria (signed 13 November 2025, commenced 12 December 2025); *Statewide Treaty Act 2025* (Vic). See also Ashton, Fitzgerald and Jash, "Australia's first treaty with Aboriginal people signed in Victoria" (*ABC News*, 13 November 2025) <<https://www.abc.net.au/news/2025-11-13/australia-first-treaty-agreement-signed-law-victoria/106002730>>.

⁴ See, eg, Hobbs, "The Four Dimensions of Indigenous-State Treaties" (2026) 37 *Public Law Review* (forthcoming).

⁵ Galloway, "Victoria's Treaty Bill and the evolution of lawmaking in a Westminster democracy" (2025) 50 *Alternative Law Journal* 249 at 249.

⁶ Victorian Government, "Information about Victoria's Treaty and Statewide Treaty Act 2025" <<https://www.firstpeoplesrelations.vic.gov.au/information-about-victorias-treaty-and-statewide-treaty-act-2025>>. See also Galloway, "Victoria's Treaty Bill and the evolution of lawmaking in a Westminster democracy" (2025) 50 *Alternative Law Journal* 249 at 250-251.

participation by First Peoples in decisions that – directly or indirectly – affect their rights and interests?

AI and automated decision-making

- 14 Turning to the topic of the moment: artificial intelligence and automated decision-making. I have spoken about my views on these issues in the past,⁷ and I don't propose to repeat them.
- 15 In other jurisdictions, these technologies are increasingly being explored or deployed in ways said to enhance access, efficiency and participation. But the administrative law question remains: on what authority, under what safeguards, and with what capacity for explanation and review?⁸
- 16 In Australia, courts and tribunals are considering whether, and in what ways, AI may appropriately be used to support their work – whether in administration, legal research, case management or other processes ancillary to adjudication. But any such use must begin with the right question: what is the statutory task of the decision-maker? Applying that same question to a disciplined approach to AI: what is the task, who performs it, and who is legally responsible for the result?
- 17 As AI becomes increasingly sophisticated, and its development increasingly rapid, any use of these tools must confront a rule-of-law checklist: lawful authority; procedural fairness; transparency and explainability; the capacity to give intelligible reasons; and reviewability. Or put in a different form, the critical questions include: what is the decision-maker's task? Who bears responsibility for the outcome? How will affected persons understand and challenge the process?
- 18 Oversight and judgment are critical in how we use AI, because the task of public decision-making is ultimately a human one.

Threats to democracy

- 19 When we look at these issues – climate change, the rights of First Peoples, the rapid expansion of AI – we see ourselves as part of a wider community. None of us is an island. We belong to, and play a crucial role in, larger institutions, including the Australian constitutional structure and democracy itself.⁹
- 20 I once said that courts exist in a constitutional structure the maintenance of which depends on both a political culture and a culture of politics.¹⁰ A political culture is one in which there is respect for judicial decisions and independence. A culture of politics is one in which the social, political and economic challenges the country faces are the concern of the political arms of government. In other words, the integrity of the Australian constitutional structure depends on courts being, and being seen to be, separate from politics and the political branches.
- 21 Administrative law is an area where the line between a political culture and a culture of politics becomes more difficult to discern. As Paul Craig has written: "An understanding of the nature and purpose of administrative law requires us to probe

⁷ Gordon J, "Automation, Innovation and the Rule of Law – Oil and Water?" speech delivered at the Australasian Institute of Judicial Administration Conference, 26 May 2018; Gordon J, "Justice in a Changing World – The Responsive Bench", speech delivered at the Australian Judicial Officers Association 2025 Colloquium, 10 October 2025, especially at 7-8 [23]-[27], 20-27 [61]-[76].

⁸ See, eg, the examples discussed in Gordon J, "Justice in a Changing World – The Responsive Bench", speech delivered at the Australian Judicial Officers Association 2025 Colloquium, 10 October 2025.

⁹ Gordon J, "The Politicisation of Courts: Instrument of Politics or Political Instrument?" speech delivered at the Asia-Pacific Judicial Colloquium, 27-30 March 2023) at 1 [1].

¹⁰ Gordon J, "The Politicisation of Courts: Instrument of Politics or Political Instrument?" speech delivered at the Asia-Pacific Judicial Colloquium, 27-30 March 2023) at 1 [1].

further into the way in which our society is organised. It requires the articulation of a type of democratic society in which we live and some vision of the political theory which that society espouses".¹¹

- 22 Given the close connection between administrative law and the political and social environment,¹² administrative law is distinctly affected by trends such as democratic decay.¹³ The proliferation of disinformation and the devaluation of truth affect the health of democracy.¹⁴ They also have consequences for those tasked with making decisions and reviewing decisions. Our decisions might be viewed with suspicion; our legitimacy may be questioned and courts, in particular, may be accused of politicisation.¹⁵
- 23 Equally, however, the judiciary, and administrative bodies, are key institutions to which the public looks to *protect* democracy. Administrative law is one of the ways a democratic system proves that public power is exercised under and according to law. Supervisory bodies like courts, ombudsman agencies and anti-corruption bodies are balancing institutions that act as guardrails against democratic erosion. We must therefore ask: how can we make decisions, and ensure decisions are made, which promote the fundamental value of democracy? That is a big question.
- 24 I do not pretend to have complete answers. But I am confident about one thing: process matters. For that reason, we must continue to apply reason to reasons. The discipline of careful decision-making – attention to the statutory task, to the facts and material before us, and the giving of reasons that are clear, accurate and comprehensible – is not a merely technical or procedural practice. It is a legitimacy-preserving practice. Clear, accessible reasons do more than defend a decision in court; they enable public understanding and democratic accountability.
- 25 Looking beyond the individual case, the way in which administrative law addresses issues like climate change and technological innovation, and our commitment to First Peoples, will also have consequences for the future of Australian democracy. A decision informed by robust First Peoples' participation and consultation may be more legitimate and better reasoned; on the other hand, an AI-assisted process that lacks transparency or explainability will undermine both accountability and legitimacy.

Conclusion

- 26 All of this is to say that administrative law decision-making in the current political climate is as important as ever. Administrative law sits at the seam between politics and the law. Administrative decision-makers are the face of an individual's relationship with the State: when a person applies for a visa, for a licence, for social security benefits, and so on. We must ask if our institutions have the capacity to meet changing societal demands.¹⁶

¹¹ Craig, *Administrative Law*, 9th ed (2021) at 1.

¹² Groves, "Administrative law values – A response to Chief Justice Gageler" (2026) 56 *Australian Bar Review* 113 at 120.

¹³ See generally Kavanagh and Rich, *Truth Decay: An Initial Exploration of the Diminishing Role of Facts and Analysis in American Public Life* (2018).

¹⁴ See generally Kavanagh and Rich, *Truth Decay: An Initial Exploration of the Diminishing Role of Facts and Analysis in American Public Life* (2018).

¹⁵ Gordon J, "The Politicisation of Courts: Instrument of Politics or Political Instrument?" speech delivered at the Asia-Pacific Judicial Colloquium, 27-30 March 2023.

¹⁶ See Creyke et al, *Control of Government Action: Text, Cases and Commentary*, 5th ed (2018) at 4 [1.1.4], quoting McAuslan, "Administrative Law and Administrative Theory: The Dismal Performance of Administrative Lawyers" (1978) 9 *Cambrian Law Review* 40 at 40.

- 27 Over the next two days, my hope is that we approach the theme of "crisis" not with resignation, but with recognition: recognition that the ordinary disciplines of administrative law are not diminished in times of crisis. They are made more important. Decisions must continue to be lawful, reasoned, intelligible and non-arbitrary. Australian administrative law, as it develops to meet the challenges around us, must remain anchored in those precepts.
- 28 I congratulate the organisers for a wonderful conference program. I know it will be productive and thought provoking.