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## President's message

This month saw more dreadful devastation with the Japan earthquake and resulting tsunami. Our thoughts are with the Japanese people with the enormity of their suffering and we have offered whatever assistance we can to our colleagues.

March has been another busy month for the Law Council as we continue to push forward with our major objective of national profession reform.

National reform is still a top priority for the Law Council. On February 13 of this year, COAG agreed in principle to settle reforms to legal profession regulation by May, 2011. As this date draws nearer, the Law Council is still pressing for some further amendments to the Taskforce Consultation package and I am confident the draft legislation can be improved further. There will be ongoing discussions and negotiations on the National Rules once the National Board is established. In this month's edition of *@theLCA* there is a dedicated Q&A section that will look at some of the pressing issues, for lawyers and the profession, surrounding legal profession regulation.

The Law Council is also continuing its support of the ACT Law Society in denouncing proposed reforms to third party insurance laws in the Australian Capital Territory (ACT), which will directly impact on people's ability to access compensation as a result of road accidents.

Under the proposed changes to the *Road Transport (Third Party Insurance) Bill 2011*, a victim injured on ACT roads will need to suffer permanent impairment to over 15% of their body before they can receive compensation for pain and suffering, despite the lasting and debilitating impact of injury on their lives.

It's estimated that the ACT Government's proposed changes will strip away the rights of over 84% of people injured on ACT roads through no fault of their own.

March has also been the month of the young lawyer. Just last week the Law Council announced the 2011 recipients of the John Koowarta Reconciliation Law Scholarship. The Law Council has been involved with this Scholarship since its inception in 1994 and is extremely proud of its outstanding success of the Scholarship in assisting several indigenous Australians in completing their legal studies. Interviews with this year's recipients are available in this edition of *@theLCA*.

Continuing the theme of outstanding young lawyers in the community, Senator-elect for Queensland, Larissa Waters, was also announced this month as the Australian Young Environmental Lawyer of the Year. Larissa has made significant contributions to public interest environmental law in the fields of community legal education, law reform, legal advice and casework and has also delivered dozens of presentations to community groups interested in urban and regional environmental protection. There is a great write-up of Larissa and her work in this edition, which I encourage you to read.

And of course there was Louisa Fitz-Gerald—profiled in last month's *@theLCA*—who recently won the Australian Young Lawyer Award. It's great to see the contribution young lawyers are making to the legal profession and society in general.

Capping off this busy month was the launch of the Collaborative Practice Guidelines, Collaborative Practice Training Standards and Collaborative Practice Trainer

President’s Message (cont.)

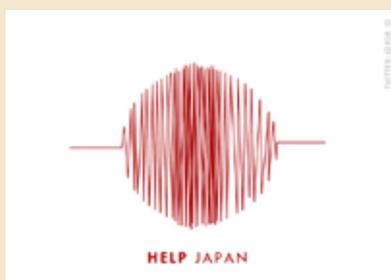
Standards at Parliament House. The Law Council was honoured to have the Commonwealth Attorney General, the Honourable Robert McClelland, officially launch the Guidelines and I would also like to acknowledge and thank the members of the Collaborative Practice Committee for their work in further establishing this new area of practice.

— Alexander Ward

Law Council offers support to disaster ravaged Japan and New Zealand

The Law Council would like to offer its deepest sympathies and condolences to the people of Japan and New Zealand in the wake of recent natural disasters.

The Law Council has been in touch with their colleagues — Mr Akira Kawamura, President of the International Bar Association; Mr Kenji Utsunomiya, President of the Japan Federation of Bar Associations; and Mr Jonathon Temm, President of the New Zealand Law Society — and has offered assistance as both nations begin their slow recovery.



Q&A — National Profession Project

National reform is an issue that affects everyone in the legal profession across Australia. It is an issue the Law Council of Australia has been involved with since its inception in 1933.

During the period 2004 to 2008 almost every state and territory enacted a *Legal Profession Act* based on Model Laws developed through the National Legal Profession Model Laws Project. This project took Australia a long way toward creating a legislative and regulatory framework for a national legal profession and national legal services market. While a significant achievement in its own right, the Model Laws Project still left substantial legislative and regulatory differences across jurisdictions.

February 2009 marked a significant development in the ongoing efforts to reform Australia’s legal profession when the Council of Australian Governments (COAG) agreed to add legal profession reform to the micro-economic reform agenda. In December last year the COAG National Legal Profession Reform Project Taskforce released proposed uniform national law and national rules which represented an important development in the creation of a truly national Australian legal profession, providing legal services within a truly national legal services market.

The Law Council of Australia has been a key player in driving the national reform project and this month @theLCA sat down with the Law Council President, Alexander Ward, to discuss what the project meant to legal professionals, and, more broadly, the profession.

What is the National Profession Project?

We have been undergoing reform in Australia over many years to make the practice of law seamless across the country.

The national legal profession reform is in the final stage of that process, and will create a single national market for legal services, which will simplify and standardise regulation of the legal profession.

What do you mean by ‘a single national market for legal services’?

We currently have Mutual Recognition laws under which admission to the legal profession by the Supreme Court of one State or Territory is recognised by the Supreme Court of every other State or Territory.

We currently have Legal Profession Acts in seven of the eight States and Territories which confirm mutual recognition of admission.

These Legal Profession Acts also provide for practising certificates in one jurisdiction to be recognised as conferring practising entitlements in every other jurisdiction.

Despite this underlying national legal practice framework, the Legal Profession Acts contain barriers and impediments that stand in the way of seamless national legal practice.

For example, we still have different classes of practising certificates in each jurisdiction. We have different kinds of conditions imposed on practising certificates; we have different notification and disclosure requirements; we have admission rules applied in different ways; we have different professional indemnity insurance rules, we have different costs disclosure and billing rules; we have different rules for resolving consumer complaints; we even have legislation drafted and numbered differently across jurisdictions.

These kinds of barriers and impediments stand in the way of a single national market for legal services, and the very concept of an Australian legal practitioner.

They are an anachronism in modern Australia that serve no useful purpose for legal practitioners who either do, or aspire to, practice law anywhere in Australia.

Why is national reform to the legal profession needed?

There are a multitude of issues as to why reform is need. But at the heart of the issue lies the inefficiencies within which the profession operates. The

profession is restricted by geographical boundaries and regulatory barriers in offering legal services to the community.

Clients do not regard themselves as bound by state borders. The internet has seen to that, as well as cheap airfares. Clients can do business anywhere, and appear in another capital city in a matter of hours.

In fact, the legal profession is currently the most over-regulated profession in Australia, the current cost of which is estimated to be \$65.5 million per year.

Lawyers also have to work their way through a myriad of rules and regulations, some of which are inconsistent — especially across jurisdictions. These jurisdictional differences add to the compliance burden for both law practices and individual practitioners.

This adds to the overall cost of legal services, and clients will not accept this. Also, legislative and regulatory differences across jurisdictions inhibit Australia's ability to compete in the international legal services market.

National reform to the legal services sector will make life both easier and cheaper for lawyers and their clients alike.

### How will reform make legal services cheaper for consumers?

A national approach would eliminate dead-weight compliance costs to reduce legal costs for consumers. Fragmented approaches duplicate costs for national and multi-jurisdictional law practices. These costs are ultimately passed on to consumers.

For example, if a New South Wales (NSW) lawyer was purchasing land for a client in Queensland, cross-jurisdictional compliance laws would need to be met, which ultimately adds to the cost for consumers. A national legal profession would eliminate hurdles like this and reduce costs.

Consumers' access to the services of the legal profession should not be determined by State and Territory borders, nor should the legal profession itself be

restricted by geographical boundaries or regulatory barriers in offering legal services to the community.

### What about consumer protections? There have been accusations that these reforms are purely for the benefit of lawyers and consumer protections will be eroded.

This is not true. Paramount to national reform of the legal profession is consumer protection.

The laws require lawyers to charge fair and reasonable costs, and have costs agreements that clients understand. Whilst this clearly assists the clients, it will also lead to a significant reduction in costs disputes, the major source of complaint by simple fact that all parties will understand the basis of charging from the very outset of a case. Lawyers understand these consumer protection laws will benefit them as well.

There will not be a centralised complaints and discipline-handling body. Consumer complaints will continue to be handled by each jurisdiction — the legislation will require the appointment of a local representative of the National Legal Services Commissioner in each jurisdiction to administer and manage the complaints-handling framework. The proposed Legal Services

Commissioner will be able to issue guidelines to ensure that complaints are handled consistently.

A key part of these reforms involves ensuring that clients are adequately informed and protected from the consequences of poor legal services, negligence and fraud. For these reasons governments have a strong interest in ensuring that all consumers of legal services benefit from robust costs disclosure and complaints and discipline systems, and that all clients enjoy the same basic levels of protection through professional indemnity insurance and fidelity funds regardless of where they reside or obtain legal services.

A robust legal profession is vitally important to Australia's system of law and justice. As such, these reforms will continue to ensure that only people who are appropriately qualified, trained and who are fit and proper persons will be admitted to the legal profession. There will be nationally consistent requirements for ongoing professional development training, including ethics.

There are many key aspects of the reforms that are squarely aimed at enhancing consumer protection. The complaints-handling provisions in the system will clearly distinguish between complaints that are a consumer matter



## Q&A — National Profession Project (cont.)

and complaints that are a disciplinary matter.

Consumer matter complaints will include matters relating to quality of service or complaints about costs (within prescribed limits).

The consumer complaints and professional discipline provisions must be administered by the Commissioner's local representative in each state and territory, so the laws make use of existing structures.

### **W**ould complaints involve drawn out litigation?

The consumer complaints-handling provisions are aimed at informal mechanisms as the primary method of resolving complaints.

A consumer complaint can only be actioned by the Legal Services Commissioner where he or she is satisfied that at least one of the parties has made a reasonable, but unsuccessful attempt to resolve the complaint. In other words, the system reinforces the need for clients and practitioners to work their way through, and hopefully resolve, disagreements and concerns without resorting in the first instance to formal processes.

Consistent with the desirability that disagreements be resolved informally, the Commissioner must attempt to resolve a consumer complaint informally — the overwhelming majority of consumer complaints are currently resolved this way.

Through mediation, which, if successful, will enable a settlement agreement to be concluded and lead to the consumer matter of the complaint being closed.

Through the Legal Services Commissioner making a determination that is considered to be fair and reasonable in the circumstances. A determination can include making an order for:

- ◇ a caution;
- ◇ an apology;
- ◇ an order to redo work at no cost or a reduced cost to the client;
- ◇ a compensation order of up to \$25,000

Compensation orders for amounts above \$10,000 carry with them a right of appeal for the lawyer or law practice against whom the compensation order is made.

Consumer complaints involving a dispute about costs are to be handled the same way as consumer complaints about other matters where the total bill for costs is less than \$100,000, or if the total bill is more than \$100,000, the disputed amount is less than \$10,000.

As with other consumer matters, the Commissioner will be able to make a binding determination about costs, but only where the total amount of legal costs in dispute is less than \$10,000.

Costs disputes that cannot be resolved informally and are outside the \$10,000 limit for determinations by the Commissioner, must be resolved through the formal costs assessments processes.

In a change from current arrangements, complaints involving disciplinary matters can be resolved by the Commissioner making a finding that the law practice has engaged in unsatisfactory conduct, which can lead to a determination that can include:

- ◇ a caution;
- ◇ an apology;
- ◇ an order to redo work at no cost or a reduced cost to the client;
- ◇ a fine of up to \$25,000;
- ◇ a compensation order of up to \$25,000.

A determination by the Commissioner that a law practice has engaged in unsatisfactory professional conduct (and the orders so made by the Commissioner) can be appealed against, so there is protection for the practitioner as well.

The new dispute resolution and professional discipline provisions has been an area of particular discussion and concern about whether the right balance has been struck as between the consumer perspective and the legal practitioner perspective.

From the practitioner perspective, a number of "safeguards" have been included:

- ◇ The primary emphasis is upon informal dispute resolution.

◇ Determinations in consumer complaints that involve a compensation order of more than \$10,000 are appellable.

◇ Where a determination in a consumer matter involves a dispute about costs, the Commissioner must apply the same factors in determination regarding what are fair and reasonable costs as a costs assessor is required to apply.

◇ Determinations that a law practice has engaged in unsatisfactory professional conduct (and the orders so made by the Commissioner) are appellable.

◇ The Commissioner may undertake an internal review of decisions made in his or her name under the dispute resolution and professional discipline provisions.

◇ The Commissioner may issue guidelines and give directions about the way in which the dispute resolution and professional discipline provisions are to be administered.

The inherent jurisdiction and powers of the Supreme Courts in respect to the control and discipline of Australian lawyers are not affected by anything in the dispute resolution and professional discipline provisions of the National Law.

**A**nother concern expressed is that the COAG reform project has really been driven by a desire to make things easier for large law firms.

The COAG reforms are intended to ensure Australia has a seamless national legal services market for **all** firms.

All legal practitioners and law practices will operate on a level-playing field, regardless of size or of place of practice or location of their clients.

The nationally uniform regulatory system aims to achieve this by removing jurisdictional barriers for any law practice that provides legal services across state and territory borders.

Large law firms obviously operate across state and territory borders, but so do many small law firms. Barristers

appear in many jurisdictions. I deal with country firms that practice in border areas. Lawyers in the Riverland in South Australia (SA) have clients in Mildura in NSW. Those in the southeast of SA act for Victorian farmers. Across the top of Western Australia (WA), lawyers act in the Northern Territory (NT), and vice versa. The important point is that the client can keep using the same lawyer no matter where their dispute or case is. Eliminating jurisdictional barriers for sole practitioners and small law practices is just as important as it is for large "national" law practices. The benefits and improvement for clients occur no matter who they chose to retain.

## How will the process of national reform work?

The changes will be substantial, but hugely beneficial for the profession and clients. All legal practitioners and law practices will operate under the same legislation, national rules, rules of professional conduct, legal practice rules and CPD rules.

A National Legal Services Board will be established to ensure efficient, targeted, effective and consistent regulation throughout Australia. The profession will be able to evolve as changes occur in practice. One notes the significant difference caused by the internet as one example of recent change that has affected social and business relationships across the world. Law and its practice must be able to adapt to change such as this.

A National Legal Services Commissioner will be established to ensure consistency in the way the legislation is applied and administered in areas, such as complaints, trust accounting, and general compliance throughout Australia.

The phenomenon of creeping unilateral change that we now see in the existing Legal Profession Acts will be overcome. The National Law will operate as an applied law scheme, under which it is enacted by a host jurisdiction and applied by each of the other States

and Territories. Legislative change proposals will be considered and agreed to by a Standing Committee of State and Territory Attorneys-General. Any change applies to all jurisdictions to ensure consistency.

All state and territory regulators will administer the legislation under the same National Rules, guidelines, policies and practices.

It is envisaged that Government lawyers and in-house counsel will be brought into the mainstream of the legal profession by being required to obtain and maintain a practising certificate.

The admission rules, conduct rules, Continuing Professional Development Rules and practising certificate rules will be the same for everyone, and applied consistently across the country. Professional indemnity insurance minimum standards will also be the same for everyone.

Jurisdictional differences that cause lawyers and legal practitioners to be classed as either local or interstate lawyers and legal practitioners will be removed. All persons admitted to the legal profession will be admitted as an Australian lawyer.

Admission by one Supreme Court automatically means the Australian lawyer is an officer of every Supreme Court.

Distinctions between local and interstate practising certificates will be removed — all legal practitioners will hold an Australian practising certificate automatically entitling them to engage in legal practice in any jurisdiction according to their individual practising entitlements, set once for the whole of Australia.

The ability to adopt business structures for legal practice will be enhanced. As well as the traditional sole practitioner and law firm model, law practices will be able to structure themselves as incorporated legal practices and unincorporated legal practices— including multi-disciplinary and limited liability partnerships.

## What will become of state and territory Bars and law societies?

Federal and state governments have recognised the importance of involving the legal profession itself in its own regulation, and have maintained — to varying extents — a system of co-regulation under which regulation of the legal profession and the provision of legal services is shared between law societies, bar associations, the courts and statutory regulators.

The challenge for governments has been to develop a national approach to regulation of the legal profession and the provision of legal services, having regard to the constitutional reality that legal profession regulation is a matter for each state and territory. If national reform is going to work, there needs to be a climate of enduring agreement and cooperation between the states and territories. It is in the broader national interests that the objectives of this project be achieved and maintained, which is why it is important for all the states and territories to be involved.

## South Australia and Western Australia have opted not to become a part of the National Profession making the reform of the legal sector not national at all. What does this mean for the reform process and what are the implications for the two non-participating states?

Well, I note there has been a lot of negotiation over the last months whilst different states and interest groups have been involved in the development of the Bill. The reform process will continue. We know that six of the eight jurisdictions will begin the scheme, but I am confident that the other jurisdictions will see the advantages of joining the national scheme and will do so. If for no other reason, then the lawyers in those states will have to be at a disadvantage by not being Australian practitioners.

It is difficult to know precisely how this will work in practice. Legal

practitioners from these jurisdictions will not be recognised as Australian practitioners — this we know, because it is the effect of non-participation. What this does to their rights to practise interstate and how they will or will not be recognised by participating jurisdictions is still very much up in the air. It is a significant concern for me, as a South Australian barrister who also practices in the Northern Territory and in NSW. Whilst current Legal Practitioner Acts have rights of reciprocal practice, they will of course be superseded by the National profession legislation. It recognises Australian lawyers and Foreign Lawyers only.

Lawyers with firms in participating and non-participating jurisdictions will be especially disadvantaged as they will have to be versed in two sets of rules and regulations, if they can still practice as one entity in two different states. Their competitors will not be.

Also, another key aspect of the national reforms involves enhanced consumer protection mechanisms as mentioned earlier. It is inconceivable in a country with our small population that some citizens will have costs protection and standardised dispute resolution procedures, but others would not.

It is also difficult to see that when six out of eight, or 75% of the jurisdictions in Australia think this is a system worth adopting (including the smallest to the largest) that two would form a different view. I hope that they will now look at the Bill and the benefits of joining, as against the detriments of not.

I have seen the experience in the USA, where the borders are strictly enforced to fragment the profession on a state by state basis. They long for a system such as we are pursuing.

### **What about professional conduct rules? Will they fall under the auspices of national reform?**

Yes, practitioners will abide by the same rules of professional conduct unlike the current system whereby penalties for non-compliance are not

consistent across jurisdictions. For example, engaging in legal practice when not entitled carries a fine in NSW, the ACT and the Northern Territory; a fine or up to three years imprisonment in Queensland and a fine or up to two years imprisonment in Victoria.

The Law Council has now settled professional conduct rules and these will form part of the new national law.

### **The legal profession is intrinsically linked to other areas of the national economy. What effects will national reform have on other areas of industry?**

A primary interest of governments in legal profession regulatory reform derives from their broader micro-economic objectives. The legal services sector itself is a significant source of economic activity and also facilitates economic activity in other sectors of the economy.

Federal, state and territory governments have a vested interest in eliminating regulatory differences in the legal services sector. National reform will simplify practices for businesses and industry operating in more than one state or territory, and ultimately make the nation more productive and competitive in the international economy.

### **Will the profession remain truly independent after these reforms?**

In my view there is no risk whatsoever of the legal profession in Australia losing its independence, under this scheme. However, there are numerous features of the new national system that maintain the independence of the profession.

Firstly, the Standing Committee of state and territory Attorneys-General cannot give policy directions to the Board or Commissioner.

The legal profession will retain the right to develop legal practice, professional conduct and continuing professional development rules, with limited powers of veto by the Standing

Committee (restricted to public interest or cost grounds).

Three out of seven Board positions are appointed on recommendation of legal profession.

In addition, the legal profession may nominate, and must concur on the recommended nominee for the seventh member of the Board.

### **What about trust and controlled money accounts — will they operate under new rules if legal profession reforms are enacted?**

Yes. Currently, the choice of Approved Deposit-taking Institutions to use for trust accounts and controlled money accounts is different in each jurisdiction. If enacted, national profession reforms will give national and multi-jurisdictional law practices the ability to create a single national trust account. This will simplify compliance, reduce costs and promote competition among Approved Deposit-taking Institutions for the substantial amounts of money passing through trust accounts.

### **Note the Law Council's extensive work in advocating for international practice rights overseas; will national reform have any effect on the internationalisation of the legal services market?**

Yes, it will be a positive effect in that a uniform Legal Profession Act and rationalised regulatory structure will support and facilitate the internationalisation of the legal services market and Australia's Free Trade Agreement objectives.

This is a very persuasive matter we can raise with our colleagues overseas when we are seeking limited rights of practice in their jurisdictions, which is a significant part of the Law Council's work.

As noted above, the seamless profession will put us well ahead of other jurisdictions that have closed or restricted internal borders.

## CI Arb Conference

**Innovation and Investment: International Dispute Resolution in the Asia Pacific**

**Sofitel Wentworth Sydney, 26-28 May, 2011**

As the world emerges from the global financial crisis, investment and innovation are key to reshaping and rebuilding. With the rapid growth of international trade, progressive legislative reform and technological innovation in dispute resolution, all eyes focus on the Asia Pacific region.

Offering leading-edge perspectives on international dispute resolution as an integral part of good business practice, this conference will address recent changes to dispute resolution legislation and practice in the Asia Pacific region, including Australia; technical innovation in arbitration; regional challenges to, and opportunities for, international arbitration; international arbitration and the courts — the Australian approach; how to draft an arbitration clause; and the growth of international mediation in the region.

Speakers include: The Attorney General of Australia, the Hon Robert McClelland MP; Vice Chairman of the China International Economic Trade and Arbitration Commission, Yu Jianlong; the Head of European Litigation for Debevoise & Plimpton UK and former UK Attorney General (Blair Government) and Westfield Director, Lord Peter Goldsmith QC; retired Chief Justice of the High Court of Australia, the Hon Murray Gleeson AC; the Legal Director for Royal Dutch Shell, Peter Rees QC; and many more!

The Law Council is a co-sponsor of this event and its members and committees are invited to register at the CI Arb discounted member rate. Bookings are [available online](#). For further information, please contact Gianna Totaro [via email](#) or phone 0438 337 328

## Environmental defender set to make Canberra take notice

Larissa Waters was recently announced as the winner of the Australian Young Environmental Lawyer of the Year. She is also the Greens' first ever representative from Queensland in the federal Senate. She recently spoke with @theLCA about her life defending the environment and her upcoming role as a federal politician.

Larissa Waters is busy managing her increasingly demanding schedule when she's able to recount where her love for the environment really got serious. "In grade four I won the Environment Prize," she laughs. "And I won it again in grade five; it was the start of a deep interest in environmental issues and the values that we really need to be looking after this planet that supports us." Larissa briefly flirted with dreams of a career in drama at high school, but her passion always lay with all things nature. When she was able to combine this love with the intellectual stimulation of a law degree, she found herself onto a winner. "I always knew I didn't want to work in the corporate sector, and when a job at the Environmental Defenders Office (EDO) came up, I was absolutely bowled over and just thought it was my dream job," she says. "It was really fortunate that EDO were able to look past my limited experience, and were able to see I was so incredibly keen for the job that they took a punt on me; I ended up working there for the next nine years."

Larissa's dedication to her work spurned an unexpected, but nonetheless satisfying, reward recently when she won the 2010 Young Australian Environmental Lawyer of the Year Award. The Award, administered by the Australian Environment and Planning Law Group of the Law Council of Australia's Legal Practice Section, is awarded to a young practising barrister, solicitor, or university employee who has made a significant contribution to environmental law. "I feel really honoured to be nominated for and receive the award; it's a real boost for me as a young person in the legal profession,"



says Larissa. "It's wonderful that other members of the profession can recognise and value the contribution that public interest environment law makes to society and our environment."

Larissa won the Award for her outstanding contribution to public interest environmental law in the fields of community legal education, law reform, legal advice and casework. She has delivered dozens of top quality presentations to community groups interested in environmental protection in both urban and regional areas. Her legal analysis of reform proposals made a major contribution to the conservation debate on landmark Queensland vegetation protection legislation in 2004. She has also proven herself to be a skilled litigator and worked on a number of highly significant environmental cases including the Nathan Dam cases and the Flying Fox cases.

"She thoroughly deserved the Award," says EDO Queensland Principal Solicitor, Jo-Anne Bragg (who nominated Larissa for the Award). "It's a good thing for public interest environmental law that someone who's representing the community, and who has put a lot of effort into the public interest, be recognised in this way."

## Environmental defender set to make Canberra take notice (cont.)

Her work at EDO in Queensland is something Larissa recalls with great fondness. The National EDO Network was established in 1996 and consists of nine independently constituted and managed community environmental legal centres located in each state and territory of Australia. Each EDO is dedicated to protecting the environment in the public interest. "It's a service for members of the community who want to use the law to protect the environment in whatever aspect it might be," she says. "It's that wonderful trifecta of advice work, law reform and community education that meant no day was the same and that you always felt like you were making a difference."

Larissa cites the Nathan Dam case as the most noteworthy and significant case she worked on during her time at EDO, and one she still feels very passionately about today. The case was a test case of environmental impact assessment under the *Environment Protection and Biodiversity Conservation Act 1999*. The Queensland Conservation Council and WWF-Australia challenged decisions of the Federal Environment Minister involving a proposal to construct a large dam in central Queensland. The purpose of building the dam was to supply water to irrigate crops and other development in the catchment of the Great Barrier Reef World Heritage Area. The Great Barrier Reef Marine Park Authority commented on the likely impacts of the dam in June 1999, suggesting that the dominating crop, cotton, required aerially applied pesticides, notably Endosulfan, which is toxic to many fauna, notably fish. In their view, the development would result in significant impacts to the riverine environments, the floodplains, estuarine habitats and may increase nutrient loading to the Great Barrier Reef. Larissa was part of the team that successfully challenged the Commonwealth Government in its decision to ignore the impacts of pesticide run-off onto the Great Barrier Reef, in a case that established the breadth required



# EDO Qld.

## Environmental Defenders Office

for environmental impact assessment federally.

Larissa is a proud Queensland and having worked so closely on issues linked to the Great Barrier Reef, she is determined to see its survival. She sees the Reef as a wonderful Australian icon that she grew up and loved as a child and wants to make sure it is preserved for future generations to enjoy. "It's such an important economic generator and it's such an important job generator to this area and it's under such threat from climate change, so really I want to try and bring some emphasis onto the Great Barrier Reef as essentially a symbol of how important it is we act on climate change," she says. "I'm hoping that I can use my expertise in environmental issues and community legal issues to bring the focus to sustaining this planet that supports us, making sure people have a better quality of life, and ensuring people have a proper say in the decisions that affect them."

Winning the 2010 Young Australian Environmental Lawyer of the Year Award has come as no surprise to those who know Larissa, "She is really enthusiastic and passionate about the environment," says Stephen Keim SC who supported Larissa's nomination for the Award. "Working at a community legal centre [like EDO], they're good jobs but not easy jobs. I'm impressed by people who take on those non-glamorous jobs and stick at them for a long time — that's one of the things you can say about Larissa."

"She was clearly a very capable and intelligent person," recounts Bragg, from her first meeting with Larissa. "Added to that was a great interest for public interest work."

The award has come at what Larissa describes as "an odd time". In last year's Federal Election, Larissa was the Greens Party's lead candidate for the Senate in Queensland. Profiting from the mood of antipathy that much of the electorate felt for the major parties, Larissa secured a 5.4% swing towards her and was anointed the first ever Greens Senator to represent the Sunshine State. But that's not to say she didn't make it on her own merits. Larissa ran her campaign on a strong environmental platform, with particular emphasis on better protecting the Great Barrier Reef, promoting renewable energy, and protecting good quality agricultural land in Queensland from incompatible land uses.

Larissa is a relative new-comer to the political 'game' — she has run as a candidate for the Greens in two Queensland state elections (including against former Premier Peter Beattie) and twice as the lead Senate candidate in federal elections. "I guess the decision to do so [run for Parliament] was a culmination of my frustration at the limit of the law," she says. "I took the decision that I did want to get into politics to try and improve laws and improve community rights and improve environmental outcomes." A friend in the Greens Party enticed her to run and like her start at the EDO, she knew she was hooked from the beginning. "I really enjoyed getting out there amongst the community and hearing that other people felt the same way I did; it was really a nice affirmation that despite the challenges we face environmentally, socially and even economically that we will pull through as a planet."

"Larissa has worked at the coalface in terms of environmental law which brings her a very good skill set and very

good set of experiences to the role,” says Keim of Larissa’s ability to make a difference in the often cutthroat world of politics. It’s a sentiment that permeates through all her supporters (just ask her 1,755 followers on Facebook).

Being a politician isn’t an easy job though. One only needs to look at the transformation of former Prime Minister Kevin Rudd from circa 2007 to 2010 to see the toll it can take on a person. Larissa is ambitious and determined to make a difference, but how does she temper her desires for major environmental reform versus the realities of politics where compromise is a basic tool in the survival kit?

“What the Greens have said so far in terms of particular Bills is that we will look at everything on its merits and where we think it’s worthy of our support, and will achieve good things, we will support it,” explains Larissa. “I think it’s really important that we [the Greens] try to remain above politics as much as possible and remember we’re there to represent the community and the environment. It’s going to be a challenge and of course we’re not going to achieve as much as we’d like to achieve, but it’s important to aim high and I think that will help me keep my eye on the ball and my eye on the broader picture of why we’re here and what we’re working for.”

Larissa is determined and optimistic, but is certainly no idealistic dreamer. She knows what will be required of her to succeed in the political arena and is already adjusting to life as a politician. “It’s still fundamentally about the laws of this country and what they can achieve and whether they give people a say and whether they protect the environment; but it’s also about communicating more broadly to the average person of the street and listening to their concerns,” she says on the differences between life as a lawyer and politician. “It is different, but I’m hoping my legal skills can help me in the parliamentary side of things.”

But tangling with the Hokey-Pokey antics of some of her Senatorial colleagues may not provide the toughest challenge for Larissa. Away from her working life, she speaks glowingly of her nearly-two-year-old daughter and says spending less time with her will be one of the toughest aspects of her new lifestyle. “That’s going to be difficult to adjust to, not being able to see her quite as much. Juggling motherhood and Parliamentary duties will be something I’ll have to learn, but I’m really lucky to have my Mum and my partner who are both wonderful child carers.”

Larissa will officially assume her position in the Senate on 1 July this year. “My message to Larissa would be: be brave; be persistent; don’t give up when things look difficult,” says Keim when asked if he had any words of wisdom for Larissa as she heads into politics. “Remember Rome wasn’t built in a day; remember the ability to stick at things; work hard like you did in the community sector and eventually you will achieve the things you hope to achieve as a politician.”

Larissa is excited about her future ahead. She is proud of the work and achievements that have got her to this point in her life, and exudes a sense of hope and optimism that really makes you believe in what she’s trying to achieve. “I remain hopeful, I really do — I think without hope, what’s the point?”

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## Legacy of inspirational Indigenous rights activist shines through law students

Scholarships can mean a lot of things to different people. For recipients of the John Koowarta Reconciliation Law Scholarship, it not only offers them financial incentives to continue studies, but also gives them the opportunity to uphold the memory and values of one of Australia's most revered Indigenous rights campaigners.

Since the Scholarship was established in 1994 it has helped 19 Indigenous law students pursue their legal education.

On Friday, March 18, recipients number 18 and 19 — Mr Ashley Walker and Ms Aurora Milroy — were officially announced as the 2011 recipients of the Scholarship.

"Aurora and Ashley are great role models for young Indigenous people across the nation considering a future career in the legal profession," said President of the Law Council of Australia, Alexander Ward.

"They are deserving winners and I congratulate them for what they have achieved."

The Law Council has been intrinsically involved in the Scholarship since its launch in 1994. The John Koowarta Reconciliation Law Scholarship Trust was established with a \$200,000 contribution from the Commonwealth Government and the Law Council continues to act as trustee and administrator.

In presenting the Scholarship, Mr Ward said both recipients epitomised the values and principles of the Scholarship.

"It was a great honour to present Ms Milroy and Mr Walker with their scholarship; they're two outstanding role models within their respective communities and I wish them all the best for their future studies and careers," said Mr Ward.

"The John Koowarta Scholarship is something the Law Council has been immensely proud to be involved with and we consider it an important part of promoting Indigenous involvement in the legal profession."



### Scholarship 2011: Aurora Milroy

You get a vibe just from talking to Aurora Milroy that she is destined for big things. And then a quick glance at her already impressive résumé confirms the feeling.

At just 20 years old she speaks with wisdom beyond her years and is determined to make a difference through her education.

Aurora is passionate about her heritage — she is a member of the Palyku people from the Pilbara in Western Australia — and is particularly interested in Native Title law.

Coming from a region saturated in mineral wealth, Aurora knows all too well the struggles involved with securing Native Title rights for Indigenous peoples. She has witnessed the struggles firsthand as her family has been involved in Native Title negotiations with mining companies and the WA Government for many years.

"I don't think the law today is a good place for Indigenous people; it's very weighted against them," she says.

"My grandmother Gladys Milroy lives with us; she is now 83 years old and is still fighting to protect Palyku sites from mining and development. This includes the Woodstock Abydos

reserve, which is one of the oldest and richest rock art sites in the world.

"The ability to stand up for the land when heritage listings get overturned all the time and cultural connections tests in the Western system: all the tests for Native Title are quite onerous.

"Our heritage is precious and once destroyed cannot be replaced."

When Aurora first enrolled in her law degree she was seeking a challenge and she quickly discovered her education presented the ideal opportunity to help her people. "I'd really like to be able to help Indigenous people who often — especially in rural areas — aren't as well educated and don't know their legal rights."

But far from just educating people about their rights, she is also eager to push for reforms to make the process "more up to date with modern values and understandings of Indigenous people, their connection to the land, and how we should view that".

"Making Native Title a level playing field for Indigenous people to negotiate with mining companies are the types of reforms I'd like to see.

"For instance, I believe that the test for proving connection to country is based on archaic notions of Indigenous Culture being both primitive and static."

Aurora speaks with great passion about the law but it wasn't always the obvious choice for her. "I was a bit unsure, when coming into uni, about what I wanted to do," she says. "But enrolling in law was one of the best decisions I made; I've really grown into it; I've become really passionate about it."

It was her passion for the law, and particularly Indigenous legal issues that first introduced her to the John Koowarta Scholarship. She first heard of the Scholarship through the Indigenous Legal Studies program at the University of Western Australia and the program's Academic Coordinator, Gabrielle Garratt.

"It's one of the few scholarships in the legal area that is geared towards Indigenous lawyers and social change," she says.

"It's not just a money handout; I think it's about bringing change and encouraging Indigenous people into the law and into higher careers—that's what encouraged me to apply for the Scholarship."

Winning the Koowarta Scholarship is something Aurora is immensely proud of and although she was unable to accept her award in-person due to illness (she will receive her award at a later ceremony hosted by the Law Society of Western Australia), she is acutely aware of the significant role John Koowarta played in the continuing battle of self-determination for Indigenous people.

"John Koowarta fought valiantly for the rights of Indigenous Australians, and is an inspiration for Aboriginal people working in the law. I am deeply honoured to receive a scholarship, which venerates the achievements of John Koowarta," read her acceptance letter.

Her strong knowledge of John Koowarta and his struggle against the Queensland Government in the 1970s and 1980s is founded upon her passion for history. She is currently completing a Bachelor of Arts to complement her legal studies, with a strong focus on what she describes as "a wide variety of history".

History has always been a strong siren for Aurora who views it as an important tool in helping guide future solutions to a range of issues. "To know your past is to be able to change the future," she says. "For me, I'm learning a lot from my history and law degree about what society is at the moment and I think this will definitely help me in the future."

As a young, intelligent and highly educated member of the community, Aurora is an inspirational figure for many young Indigenous people around the country and what they can achieve. Whether unwanted or not, she acknowledges there are many unique challenges she faces as an Indigenous law student (and a successful one at that), particularly when balancing her desire to help Indigenous communities versus her aspirations to forge a successful law career (much of the most prestigious legal positions in WA are driven by the mining-boom and mining companies, or simply aren't focussed on Indigenous legal issues).

And there is also the issue of Indigenous disadvantage in Australia. As political footballs go, this issue has been a never-ending game of kick-around with both sides of the political divide struggling to make a real and lasting impact. As a fiercely proud Indigenous person, Aurora is acutely aware of the struggle many Indigenous Australians face on a daily basis. "A lot of the problems I think are with policy towards Indigenous people," she says.

"Fundamental change needs to happen. We need to change perceptions and not look down on Indigenous people as needing a helping hand. We need to go forward together; we need Indigenous people to have a greater right to self-determination; we need Indigenous knowledge systems to be recognised."

Speaking to Aurora about issues as complex and emotive like Indigenous disadvantage, you'd almost forget she is still so young. Her passion for her education is palpable and pays undeniable

homage to the old adage of 'knowledge is power'. "I like being armed with knowledge," she says.

She is also just as active away from her studies as she is in them. Aurora is heavily involved in extra-curricular and volunteer activities, including numerous volunteer-based events for Red Kite — a leading Australian support charity for children and young people with cancer, and their families; tutoring in primary, secondary and tertiary level English through the School of Indigenous Studies and the Study Smarter program at the University of Western Australia; and The Follow the Dream program which helps indigenous secondary students achieve their academic goals.

And perhaps most bizarrely, she is studying the Russian language having met a Russian student through one of the study groups she runs. "I'm not very fluent at all," she says with a laugh; but you get the feeling it's only a matter of time for this capable and ambitious student.

## Scholarship 2011: Ashley Walker

At an age where young people are still trying to find their place and direction in the world, Ash Walker has a very definite sense of where he's going and where he wants to be.

He hails from La Perouse in Sydney's south-east and holds very strong ties to the local Indigenous community there. Now in his 5th year of a Bachelor of Laws/Commerce degree at the University of New South Wales he is studying law because he believes that an advanced understanding of the legal system can enable him to overcome challenges, achieve any goals he sets for himself in life and perpetuate the progression of Indigenous people.

In particular, he takes seriously the sense of duty he feels to take advantage of the opportunities his ancestors worked hard to provide for him.

## Legacy of inspirational Indigenous rights activist shines through (cont.)



Ashley Walker receives his Koowarta Scholarship from Law Council President, Alexander Ward.

"I recognise that many Aboriginal rights activists have dedicated their lives providing opportunities to further our education," he says. "It would be a shame if I was to let opportunities such as this go to waste, especially since I believe I can excel in the study of law."

And at just 22 years old he has shown his ability to excel in the law and has already achieved so many of the goals he has set for himself. He is a particularly active member of the community when not studying law and has shown himself more than willing to donate his time where needed. He currently volunteers as a tutor at Camden Public School; is an Aboriginal Advisory Group Member of the Kingsford Legal Centre; has participated in the Department of Housing, Families, Community Services and Indigenous Affairs Department's Indigenous Leadership Program; and has published articles in UNSW Law Society Social Justice Magazine.

Winning the John Koowarta Reconciliation Scholarship recently marks the latest addition to an impressively growing list of achievements. But never has Ash let the successes go to his

head. If anything he comes out a more humble person with each success who feels he is obligated to take advantage of the opportunities that he has worked so hard for.

"It's an honour to be counted amongst the previous recipients of the Scholarship who are a talented bunch," he says. This group, made up of the likes of Terri Janke, is extremely prestigious and I would very much like to use this scholarship as a base from which to follow in their footsteps.

"It's a great feeling."

Ash is hoping to use his legal training to lead a successful career as a lawyer in NSW. He hopes to establish himself in the commercial environment where he believes Indigenous Lawyers are under-represented. "This is important to me as I believe that Aboriginal people need to be represented in all areas of society in order to achieve empowerment," he says. "I also feel that I can use these skills gained in this area to aid my local community of La Perouse and possibly the Indigenous community as a whole."

Ash is a director of the Ngalaya Aboriginal Corporation, an organisation for Indigenous law students and lawyers

in NSW. "We're focusing on trying to build a network of Indigenous lawyers and law students across New South Wales," he says. The organisation has been in something of a hiatus and Ash as well as fellow students and lawyers are getting the service fully functional again. "We're also helping organise the National Indigenous Legal Conference, which will be held later on this year."

The study of law has been a positive enabler in Ash's life, but it wasn't until he was introduced to the University of New South Wales' (UNSW) Nura Gili Indigenous Programs unit that he decided law was what he really wanted to do. "UNSW run what they call a pre-program, which is a four-week introduction to law," he says. Ash found what he was looking for through this program and his interest in the law has been piqued ever since.

In particular, Ash has cultivated an interest in intellectual property law, "and particularly the challenges Indigenous people have to face in getting their intellectual property recognised," he says. "There are particular cases in the past where hard work done by Indigenous people has been taken without their permission and exploited commercially in a way that could be prevented.

"Intellectual property can only be attributed to a person and this presents a fair few problems in areas where it isn't an individual person who owns the rights but rather a community."

Like many of Ash's interests in life, his desire to get into intellectual property stems back to his roots in the local community and ensuring he can give something back. He retains strong links to his family who live in La Perouse and throughout the South Coast of NSW and enjoys spending much of his spare time with them fishing and diving. He is cousins with former dual-international Andrew Walker and counts much of his success in life to the strong support within his family.

He is also acutely aware of the disadvantages many young Indigenous

people face and hopes his success will motivate them to strive to achieve their potential. "I believe that by achieving their potential, young Indigenous people will feel the sense of achievement that I feel everyday that I work towards my goal of achieving a double degree in Commerce/Law," he says.

"I hope that by being a positive role model, I can contribute to the establishment of a culture of excellence and achievement within Indigenous communities throughout Australia."

## Inspiration: John Kowarta

John Kowarta was a man who defied a government at time when the concept of Indigenous land rights were still very much in its infancy.

He was a member of the Winychanam community at Aurukun and a traditional owner of the Archer River region on Cape York Peninsula in Queensland.

He is revered as one of the most important figures in the progression of Native Title rights for Indigenous Australians. Former Commonwealth Minister for Aboriginal and Torres Strait Islander Affairs (1991-96), the Honourable Robert Tickner, described Kowarta as, "an Australian hero who was a courageous fighter against Governments which discriminate against people on the basis of race."

When Kowarta sadly passed away in 1991, then Premier, the Honourable Wayne Goss, opened Queensland Parliament with a moving address that honoured Kowarta's legacy.

"This morning, I rise in this House to draw the attention of honourable members to what is indeed a tragedy in Queensland's and Australia's political history," he said.

"In 1973, Mr John Kowarta and a group of Aboriginal people known as the Winychanam group from near Aurukun saw the opportunity to regain their traditional land by acquiring a

large property known as Archer River Bend. The Commonwealth Government was prepared to fund the purchase of the land and the lessee was prepared to sell, but this was Crown land and the Government at the time deliberately set out to thwart that attempt to purchase the Archer River Bend property by Mr Kowarta.

"In 1972, the then Minister for Lands said in this House — "The Queensland Government does not view favourably proposals to acquire large areas of additional freehold or leasehold land for development by Aborigines or Aboriginal groups in isolation."

He went on to say that the Queensland Government was totally opposed to any Aboriginal ownership of their traditional lands. This action and policy of the Bjelke-Petersen Government sparked a legal battle unprecedented in Australian history.

"In 1981, in the case of *Koowarta v. Bjelke-Petersen and Others*, John Kowarta, on behalf of the Winychanam people, sought a declaration

that the Queensland Government was in breach of the *Commonwealth Racial Discrimination Act*. The Queensland Government had not only prevented the transfer of this traditional land to Mr Kowarta and his people but also went on to challenge the right of the Australian Government to outlaw racial discrimination. It is now common knowledge that the High Court ruled that the Australian Government had the power and indeed a duty to legislate for the elimination of all forms of discrimination. Having won the High Court case, Mr Kowarta went on to win further legal battles in the Supreme Court of Queensland, further legitimising his right to purchase the Archer River Bend property.

"That right was ultimately denied to him by the Bjelke-Petersen Government, which in a sleight of hand had declared the property a national park in 1977.

"After 20 years of battling and 10 years after John Kowarta's right to his land was verified by the highest court in Australia, the passage of this Government's



John Kowarta

## Legacy of inspirational Indigenous rights activist shines through (cont.)

*Aboriginal Land Act* for the first time would have made it possible for Mr Koowarta to return to and own his traditional land. While acknowledging that there has been some criticism of the *Aboriginal Land Act*, it nevertheless does recognise the interests and responsibilities of Aboriginal people in regard to such areas as national parks, and the legislation provides the opportunity for Aboriginal people to be involved in the ownership, protection and management of national parks to which they have a traditional link. Under this legislation, John Koowarta and his people would have been able to make a claim on the Archer River Bend national park.

“The great tragedy is that, within months of achieving his life-long ambition, last Thursday John Koowarta died at the age of 50 of a respiratory disease following an extended illness. Mr Speaker, it is only appropriate then that, as Premier of this State, I formally acknowledge and pay a tribute to the dedication and hard work of John Koowarta in pursuing the most central focus of Aboriginals’ life and culture — their land.”

Through the John Koowarta Scholarship, the legacy of this proud man lives on. Koowarta continues to inspire Indigenous people across the nation to fight for their rights and has shown them what they can achieve. The ideals of the Scholarship shine through its recipients and represent the role the legal profession in Australia has to play in working towards reconciliation.

The Law Council is proud of the outstanding success of the John Koowarta Reconciliation Law Scholarship, which has assisted several indigenous Australians in completing their legal studies, many of whom have gone on to make valuable contributions to their communities, the legal profession and Australia.

More information about the Scholarship is available on the Law Council website at [www.lawcouncil.asn.au/about/scholarships/koowarta.cfm](http://www.lawcouncil.asn.au/about/scholarships/koowarta.cfm).

## Looking forward at The College of Law — reaching the new independent constitutional status



The College of Law will soon begin creating and offering a more diverse range of recognised degree and diploma courses for ongoing legal training, following its move to become a wholly independent education institution.

The College recently launched TCOL, a public company which will be comprised of members drawn from legal communities and stakeholders across Australia and New Zealand. The independent status prepares it for a future role as a national and regional Higher Education Provider.

The creation of TCOL will also mean significant constitutional change for the College, which was created as an educational provider by the Law Society of New South Wales (LSNSW) in 1974, to be recognised as a national and regional Higher Education Provider.

Neville Carter, Chief Executive Officer, TCOL, looks forward to launching the new College corporation at the inaugural Annual General Meeting.

“This is the most significant constitutional change in the College’s history and will allow us to reposition the organisation with a much broader program portable across

the Australasian legal profession.” Mr Carter said.

“Building on our successful pre-admission courses, The College is continuing to grow into more than a pre-admission training school and into an academy for the entire legal profession, with the ability to provide a range of high calibre educational services throughout a practitioner’s career.”

At the time of incorporation of TCOL, the LSNSW appointed an initial Board of Governors comprising Law Council of Australia Executive Member Joseph Catanzariti (Chair), John Dobson, and Neville Carter.

Stuart Westgarth, President New South Wales Law Society, said, “As a founding member of the College, the NSW Law Society will continue to have a significant input and active involvement in its future direction. We support the changes that have been made and look forward to continuing to work closely with the College in order to provide the best legal education possible across Australia and New Zealand.”

For further information on The College of Law and the training courses provided please visit [www.collaw.edu.au](http://www.collaw.edu.au)

## A collaborative approach to dispute resolution

It's been described as genuine 'good news story' for the legal profession in Australia: a dispute resolution system whereby lawyers are allies instead of adversaries and litigants are kept out of the courtroom.

The system is known as collaborative practice. It was started in America in 1990 by Stu Webb, a family lawyer who had become discouraged by the traditional litigation-based approach to family law. He developed the collaborative law process, where both parties are represented by lawyers in a dispute resolution process in which all agree not to go to court or threaten to do so. If the process fails, the lawyers withdraw and agree not to represent the parties in subsequent litigation. The collaborative process supports interest based negotiation, allowing the clients to control the discussion.

Collaborative practice is still relatively new to the legal fraternity in Australia and its genesis can be traced back to 2005, when a group of 25 lawyers, mediators, therapists and others attended training run by Webb.

Law Council President-elect and Family law practitioner Catherine Gale is a pioneer in collaborative practice and was inspired after she saw how well it worked overseas. "I was at an American Bar Association meeting in Chicago in 2005 and I went to a workshop and one of the speakers there was a collaborative practitioner," Gale says. "She talked about how collaborative practice could be useful in sorting out the same-sex relationship issues because of course the law is frequently inadequate to deal with those relationships."

Gale had never heard of collaborative practice until this US encounter and she came back to Australia excited about the concept and was determined to bring the practice to her home country. "I'd been in practice for about 28 years by that stage, the majority of that time as a family lawyer, and it was very obvious to me there were very high levels of client dissatisfaction in the process that people go through when they're trying to resolve their family

law issues. It was my view that it was important for our profession to find better ways to service our clients and deliver better outcomes," she says.

And a better outcome it has turned out to be. Despite its detractors, collaborative law boasts a high success rate in resolving disputes, with studies in Canada and the United States showing settlement rates of over 95%. Collaborative practice has become so popular in the United States that collaborative lawyers now practice in over 25 States. It has also spread to Canada, the United Kingdom, France, Germany and many other countries. Anecdotal evidence in Australia indicates similar success rates in dispute settlement and there is also now a significant pool of trained collaborative lawyers in most states and territories.

It's not just about the statistics though Gale says, "It's about the fact that people come through the process in a particular way. They do a lot of the negotiating themselves and so they're supported by the professionals in the team. The lawyers work as a team, so you don't get that polarised perspective of one side trying to score points off the other."

Gale is something of a pioneer when it comes to collaborative practice and speaks about the subject with great passion. In June 2007 when the Law Council of Australia established a Collaborative Practice Committee, she was the obvious choice to chair the group. Gale is the Victorian representative on the Committee which also includes

membership from the Law Council's other constituent bodies, state and territory collaborative practice groups, as well as the Family Law Section, Legal Practice Section and Business Law Section. The diverse membership recognises the potential for collaborative practice beyond family law disputes.

The Collaborative Practice Committee has been central in establishing the *Collaborative Practice Guidelines*, *Collaborative Practice Training Standards* and *Collaborative Practice Trainer Standards*. The Guidelines were recently launched by the Commonwealth Attorney General, the Honourable Robert McClelland, at an event in Parliament House. "The continued development of collaborative law goes hand in hand with the efforts of the Commonwealth Government to encourage people to resolve disputes early and at the lowest possible level," Mr McClelland said. "The Law Council of Australia's Collaborative Practice Guidelines are a positive step that will make an important contribution to the promotion, awareness and practice of collaborative law."

President of the Law Council of Australia, Alexander Ward, agreed with the Attorney General's sentiments, "Collaborative practice represents an exciting new area for Australian legal practitioners and will have a positive impact on the broader legal profession, particularly in expanding the traditional role of lawyers. It will be a new tool in the arsenal for many lawyers in dispute resolution."



L-R: Law Council President Alexander Ward, Rachel Slat, Collaborative Practice Committee Chair Cathy Gale, Ian Nosworthy, Attorney-General Robert McClelland, Olivia Gesini, and Marck Cerché at the launch of the *Collaborative Practice Guidelines*.

### A collaborative approach to dispute resolution (cont.)

Collaborative law is not without its detractors though. As Gale has discovered, not everybody in the legal profession believes in its virtues, "It's a very radical concept for lawyers," she says. "It's a radical concept to let your clients do the negotiating; it's a radical concept to work with what has traditionally been your opponent as a team member cooperatively; and it's a radical concept for lawyers to be able to talk to the other party's client."

"There are a lot of people of the 'old school' who don't believe it's appropriate to sign a contract not to go to court. Whenever you have something that's new or radical, you will get kickback from the profession."

If collaborative law is a radical concept then Gale has no problems with being a radical. She firmly believes in the ideals and practical aspects of collaborative practice. In her speech she described the new area of practice as "a good news story for the profession". According to Gale, collaborative practice helps lawyers become part of the solution instead of being part of the problem, particularly in a litigation environment where lawyers can often make a bad situation worse. "Collaborative practice is not a past-focussed process like litigation, it's a future-focussed process," she says. "It's very much about the lawyers saying to their clients 'this is where we are today, we understand how we got here, where do we want to go from here and how are we going to work together collaboratively to map that out?' It's very much a healing process for the parties."

With a future focus in mind, Gale is confident collaborative law will continue to expand nationally and internationally. "I think the next challenge for Australia, particularly in light of the new civil dispute resolution bill that just passed, is to really look at how we might start to use collaborative law in other areas of practice such as contractual disputes and business disputes where the parties are going to have an ongoing relationship and that relationship is important," Gale says.

### Law Council Executive Member receives lifetime recognition award

The Law Council of Australia would like to congratulate Treasurer Joe Catanzariti who recently received a lifetime recognition award from the Industrial Relations Society of Australia/Australian Labour and Employment Relations Association.

The award is bestowed on a member who has made a significant and lasting contribution to industrial relations in Australia and the activities of the National Society. The award reflects the effort Mr Catanzariti has made in relation to the Industrial Relations Society over a long period of time.

In a day of great achievements, Mr Catanzariti was also made an adjunct Associate Professor at the University of Sydney Business School.

Congratulations again to Mr Catanzariti.



### Upcoming Events

#### Freycinet Family Law Conference — 14/15 May 2011

The annual conference of the Family Law Practitioners' Association of Tasmania will this year take place at Freycinet Lodge on Tasmania's east coast.

The conference will feature leading family law barristers, solicitors and judges from around Australia talking about current family law developments.

The conference will be held in conjunction with an executive meeting of the Family Law Section. A registration brochure was issued in March — to be included in the distribution list or for any other inquiries call Michael Foster on 03 62 359369.

#### April 2011

- » **Recent Developments in EU Customs Law**  
14 April, Law Council, Canberra  
[www.lawcouncil.asn.au/sections/international-law/ils-events.cfm](http://www.lawcouncil.asn.au/sections/international-law/ils-events.cfm)

- » **4th LAWASIA Children and the Law Conference**  
27-29 May 2011, Siem Reap, Cambodia  
[http://lawasia.asn.au/Children\\_home.htm](http://lawasia.asn.au/Children_home.htm)

#### May 2011

- » **Melbourne Family Law Intensive**  
7 May, Sofitel on Collins, Melbourne  
Email [kristie.fitzgerald@lawcouncil.asn.au](mailto:kristie.fitzgerald@lawcouncil.asn.au)

#### August 2011

- » **Adelaide Family Law Intensive**  
13 August, Adelaide  
Email [kristie.fitzgerald@lawcouncil.asn.au](mailto:kristie.fitzgerald@lawcouncil.asn.au)