
Register of Environmental Organisations

House of Representatives Standing Committee on the Environment

5 June 2015

Introduction

The Law Council of Australia welcomes the opportunity to provide a submission to the inquiry by the House of Representatives Standing Committee on the Environment into [‘the administration and transparency of the Register of Environmental Organisations \(the Register\) and its effectiveness in supporting communities to take practical action to improve the environment.’](#) Members of the Australian Environment and Planning Law Group of the Law Council’s Legal Practice Section chaired by Greg McIntyre SC contributed to this submission. A profile of the Law Council is at [Attachments A](#).

This submission responds to the following [terms of reference](#):

- the definition of 'environmental organisation' under the *Income Tax Assessment Act 1997 (Cth)*, including under [Subdivision 30-E](#);
- activities undertaken by organisations currently listed on the Register and the extent to which these activities involve on-ground environmental works;
- relevant governance arrangements in international jurisdictions, and exploring methods to adopt best practice in Australia;
- the administration of the Register and potential efficiency improvements.

The submission recommends that:

- the definition of 'environment' in [s 528 of the Environment Protection and Biodiversity Conservation Act 1999 \(Cth\)](#) (EPBC Act) be used as the qualifying definition for the Register so as to broaden the scope of legitimate charitable activities for environmental organisations;
- advocacy activities continue to be recognised as legitimate activities undertaken by environmental groups to protect the environment;
- taxation concessions continue for environmental organisations entered on the Register, but that the deductibility threshold for donations be raised from \$2 to a higher amount, following consultation with stakeholders;
- decisions about entry onto the Register should be made and communicated to the applicant organisation within a reasonable period of time, and progress with the application should be able to be tracked by the applicant organisation;
- the Australian Government’s *Administrative Arrangements Order*¹ should be amended to recognise the role of the Minister for the Environment in assisting in the administration of the Register; and
- the [REO Guidelines](#) should be amended to explain the rights of review available to organisations that are unsuccessful in their application for entry onto the Register.

The statutory definition of 'environmental organisation'

In order to be eligible for inclusion on the Register, an organisation must meet the definition of 'environmental organisation' in [s 30-265](#) of the *Income Tax Assessment Act 1997 (Cth)* (ITAA). That section requires the principal purpose of an organisation to be:

¹ [Administrative Arrangements Order - C2015Q00002 23/12/2014](#).

(a) the protection and enhancement of the natural environment or of a significant aspect of the natural environment; or

(b) the provision of information or education, or the carrying on of research, about the natural environment or a significant aspect of the natural environment.

The organisation must also agree to ensure that gifts made to the organisation are used only for its principal purpose (30-265 (4)).

[Section 12\(1\)\(j\) of the Charities Act 2013](#) (Cth) also recognises that ‘advancement of the natural environment’ is a charitable purpose, and that organisations with the principal purpose of advancing such protection can apply to be registered as charitable organisations operating for public benefit. This is an alternate pathway to tax deductibility status, with different procedures and administrative requirements from those required for the Register.

Affording charitable status to environmental organisations reflects the direct and indirect benefits of maintaining a healthy environment for the general public – both current and future generations. Issues relating to pollution, water management, climate change and protection of agricultural resources have direct implications for community well-being and are can engage human rights law.² Many environmental challenges impact disproportionately on the most disadvantaged members of society, reinforcing the public benefit of efforts to protect the environment to avoid or minimise such impacts. The principles of ecologically sustainable development (ESD) were developed in part to deal with equity issues, as well as to integrate economic, social and environmental considerations in law and policy decision-making. ESD principles are enshrined in legislation such as the EPBC Act and have been the subject of various judicial interpretations.³

The [REO Guidelines](#) (2003, updated 2014) note that the use of ‘natural’ in the definition of environmental organisation ‘is used to make a distinction between the natural environment and other types of environments e.g. built, cultural and historic environments’.⁴

The Law Council has previously advocated for an extension of this definition beyond ‘natural environment’ to better complement the broad definition of ‘environment’ under the EPBC Act. The Law Council wrote in 2011:

*The emphasis on natural environment ignores the complex interactions of communities, industry and the environment, and the role of planning and development in achieving environmental outcomes.*⁵

‘Environment’ is defined in s 528 of the EPBC Act as including:

² D Anton and DL Shelton, *Environmental Protection and Human Rights*, Cambridge University Press 2011; DL Shelton (ed), *Human Rights and the Environment*, Edward Elgar Publishing 2011; R Picolotti and JD Taillant, *Linking Human Rights and the Environment*, University of Arizona Press 2003; EDO NSW and EDO Vic, *Protection of Human Rights and Environmental Rights in Australia*: Discussion Paper, 2009.

³ See for example Section 3(1), *Environment Protection and Biodiversity Conservation Act 1999 (Cth)*; *Telstra Corporation Limited v Hornsby Shire Council* [2006] NSWLEC 133; *Lawyers for Forests Inc v Minister for the Environment, Heritage and the Arts* [2009] FCA 330; *Wyong-Gosford Progressive Community Radio Inc v Australian Communications Media Authority* [2006] FCA 1691.

⁴ Commonwealth Government, *Register of Environmental Organisations Guidelines*, 2003, updated 2014, 9 <www.environment.gov.au/system/files/pages/53ca6702-48ad-414a-bf24-60e253d5ad0d/files/reo-guide-2003_0.pdf>.

⁵ Law Council of Australia, [Supplementary submission – A Definition of Charity Consultation Paper](#), 16 December 2011.

- (a) ecosystems and their constituent parts, including people and communities; and*
- (b) natural and physical resources; and*
- (c) the qualities and characteristics of locations, places and areas; and*
- (d) heritage values of places; and*
- (e) the social, economic and cultural aspects of a thing mentioned in paragraph (a), (b), (c) or (d).*

Work to protect, plan for, regulate or manage the environment as defined in the EPBC Act should be recognised as a legitimate charitable objective for an environmental organisation.

The activities of registered environmental organisations

The Law Council has expressed the view in previous submissions⁶ that care must be taken not to confuse the activities undertaken by an organisation and the purpose or object for which the activities are undertaken. In particular, divorcing consideration of the activities which a charitable organisation participates in from its overall purposes risks misinterpreting those activities and what they seek to achieve.⁷

The nature of activities carried on by an organisation included on the Register should not impact on the organisation's status as a charity, provided the principal purpose of the organisation remains protection and enhancement of the environment. However, given the explicit term of reference inviting comment on the extent to which activities undertaken by registered environmental organisations 'involve on-ground environmental works', some comments on the nature of activities that may be considered to achieve environmental protection are set out below.

This submission does not seek to comment on the activities of particular registered organisations. However, activities that can be characterised as seeking to protect the natural environment are not limited to those that involve physical on-ground works.

In particular, education activities, advocating for effective regulation of activities that may impact on the environment, and providing legal advice and representation in respect of environmental law matters can be activities directed to the achievement of protection of the natural environment. Strong advocacy, public understanding, and participation in environmental decision-making are essential to create the framework for effective on-ground work.

Section [30-265\(1\) \(b\) of the ITAA](#) recognises that an organisation involved in the provision of information, education or research activities may fall within the definition of 'environmental organisation.'

The following comments relate principally to the legitimacy of advocacy, legal advice and representation as activities that promote protection of the environment.

Advocacy as an activity of a registered environmental organisation

[Section 12\(1\) \(l\)](#) of the *Charities Act 2013* provides that the following is a charitable purpose:

⁶ Law Council of Australia, [Submission 2491 - Definition of Charity Consultation Paper](#), 9 December 2011.

⁷ See for example, *Public Trustee v Attorney-General of New South Wales & Ors* (1997) 42 NSWLR 600.

(l) the purpose of promoting or opposing a change to any matter established by law, policy or practice in the Commonwealth, a State, a Territory or another country, if:

(i) in the case of promoting a change—the change is in furtherance or in aid of one or more of the purposes mentioned in paragraphs (a) to (k); or

(ii) in the case of opposing a change—the change is in opposition to, or in hindrance of, one or more of the purposes mentioned in those paragraphs.

The Charities Act definition is consistent with the High Court of Australia's decision in [Commissioner of Taxation v Aid/Watch](#).⁸ The High Court recognised that in a representative democracy, activities that 'agitate' for legislative or policy change serve a public benefit. Where those activities seek to further a charitable purpose, the advocacy activities are a legitimate extension of the activities of a charitable organisation.

There is no basis to distinguish the High Court's assessment of the validity of activities that analyse and critique the allocation of foreign aid and activities designed to ensure that Australia's environmental laws adequately implement international obligations in relation to environmental protection.

The Register Guidelines expressly recognise that 'promotion of ecologically sustainable development principles' falls within a group of identified activities concerned with the natural environment. The Guidelines state:

*The natural environment and concern for it would include, for example: significant natural areas such as rainforests; wildlife and their habitats; issues affecting the environment such as air and water quality, waste minimisation, soil conservation, and biodiversity; and promotion of ecologically sustainable development principles.*⁹

The Productivity Commission in its [2014 report on Access to Justice Arrangements](#) supported the provision of public funding for strategic advocacy and law reform activities. It stated:

... there are strong grounds for the legal assistance sector to receive funding to undertake strategic advocacy, law reform and public interest litigation including in relation to environmental matters.

*The Australian, State and Territory Governments should provide funding for strategic advocacy and law reform activities that seek to identify and remedy systemic issues and so reduce demand for frontline services.*¹⁰

While not directly addressing the issue of charitable purposes, these findings confirm the economic efficiency of supporting strategic advocacy and law reform activities. In the environmental context, advocacy for well-designed environmental laws can significantly improve compliance and reduce subsequent demand for 'on-ground' rehabilitation efforts,

⁸ *Aid/Watch Incorporated v Commissioner of Taxation* (2010) 241 CLR 539 December 2014.

⁹ Commonwealth Government, *Register of Environmental Organisations Guidelines*, above n 4, 9.

¹⁰ Australian Government, Productivity Commission, [Access to Justice Arrangements – Final Report](#), 2014 Recommendation 21.1, Vol 2, 711–713 at 713.

and it is economically efficient for the Australian Government to provide support by conferring tax-deductibility status on environmental not-for-profit organisations (NFPs).

The Law Council recommends that advocacy activities continue to be recognised as legitimate activities undertaken by environmental groups to protect the environment.

Environmental law advocacy

A key objective of the Law Council is the maintenance and promotion of the rule of law.¹¹

As outlined above, environmental laws and legal advocacy are crucial mechanisms by which environmental protection is delivered and international obligations are met. Advocacy activities that seek to promote law reforms to advance environmental protection, or that oppose legislative amendments that would weaken environmental protection, are activities that may be properly pursued by an environmental organisation without jeopardising its inclusion on the Register.

Well designed and well implemented environmental laws protect the environment, as well as addressing social disadvantage and 'fairness' in legal systems by securing a healthy environment and liveable communities.¹²

Respecting the rule of law requires that the public have access to information, competent and independent legal advice, and opportunities to take, or insist that governments take action to prevent or respond to non-compliance. Private law firms and community legal centres (including Environmental Defenders Offices and Environmental Justice Australia) play an important role in upholding the laws that seek to protect the environment.

The activities of these organisations have a clear role in securing environmental protection. In particular,

- explaining environmental laws to stakeholders helps to ensure that everybody understands their obligations in relation to environmental protection and carries out their activities in a manner that minimises environmental harm;
- assisting individuals and community groups to scrutinise development proposals and identify areas of non-compliance helps prevent environmental harm before it occurs;
- assisting community groups, such as Landcare and Coastcare groups, to understand statutory opportunities to participate in decision-making, fulfil various governance obligations (including managing volunteers) and understand legal requirements for their activities directly supports the on-ground activities of those organisations;
- the relationship of these organisations with on-ground groups and local communities provide an invaluable insight into the practical impacts of environmental laws and policies and how effectively they are being implemented to secure environmental protection. For this reason, governments regularly seek input from these organisations regarding the operation of environmental laws, and that input improves the quality of environmental regulation;

¹¹ Law Council of Australia, *Rule of Law Principles – Policy Statement 2011*, www.lawcouncil.asn.au/lawcouncil/index.php/library/policies-and-guidelines and Law Council Strategic Plan 2015–20.

¹² See for example: *Dobson & Ors v Thames Water Utilities Ltd (No 2)* [2011] EWHC 3253 (TCC) (08 December 2011); *City of Johannesburg and Others v Mazibuko and Others* (489/08) [2009] ZASCA 20 (25 March 2009).

- advocating for changes to laws and policies that guide environmental decision-making strengthens the framework for environmental protection and promotes ecologically sustainable development; and
- holding decision-makers to account upholds the rule of law and improves the rigour of both environmental assessments and monitoring programmes, and enhances the quality of approved developments.

Furthermore, it is well-established that providing free or low-cost legal services to persons who cannot otherwise afford to access such assistance is a service that is beneficial to the community.¹³

For all the reasons outlined above, organisations providing accessible legal assistance in relation to environmental law matters are properly characterised as ‘environmental organisations’ and should enjoy the benefit of tax-deductible gift recipient status.

Relevant governance arrangements in international jurisdictions

The Law Council’s [Rule of Law Policy Statement on Rule of Law Principles](#) (2011) provides that ‘States must comply with their international legal obligations whether created by treaty or arising under customary international law’.

In May 2015, reflecting on progress with the post-2015 sustainable development goals, a United Nations human rights experts group called on UN member States

*to ensure that the new global goals are firmly grounded in international human rights norms and standards, including the principle of participation, and that they acknowledge the importance of a free and vibrant civil society for effective implementation.*¹⁴

The International Covenant on Civil and Political Rights (ICCPR) and implementing domestic law¹⁵ protect the right to freedom of association with others.¹⁶ This right may only be lawfully restricted under the ICCPR ‘by law and ...[as] necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals, or the protection of the rights and freedoms of others.’¹⁷

The United Nations’ [Special Rapporteur on the rights to freedom of peaceful assembly and of association](#) has pointed out that the rights to freedom of association are necessary for the enjoyment of other civil, cultural, economic, political and social rights, and are an essential component of democracy. Article 22 of the ICCPR also has to be read with article 2 of the ICCPR which provides that

¹³ See for example, *Legal Aid Commission of Victoria v Commissioner for Payroll Tax (Victoria)* [92 ATC 2053](#).

¹⁴ United Nations, Office of the High Commissioner for Human Rights, ‘[A central role for a civil society is the only way to guarantee inclusive post-2015 development goals](#)’.

¹⁵ Federal implementing laws include the *Human Rights (Parliamentary Scrutiny) Act 2011 (Cth)*, *Australian Human Rights Commission Act 1986 (Cth)*, and *Native Title Act 1993 (Cth)*. State and Territory legislation implementing ICCPR obligations includes: *Human Rights Act 2004 (ACT)*, *Discrimination Act 1991 (ACT)*; *Anti-Discrimination Act 1977 (NSW)*, *Anti-Discrimination Act 1992 (NT)*, *Anti-Discrimination Act 1991 (Qld)*, *Equal Opportunity Act 1984 (SA)*, *Anti-Discrimination Act 1998 (Tas)*, *Equal Opportunity Act 2010 (Vic)*, *Racial and Religious Tolerance Act 2001 (Vic)*, *Charter of Human Rights and Responsibilities Act 2006 (Vic)*, *Equal Opportunity Act 1984 (WA)*.

¹⁶ *Sidiropoulos and Others v. Greece*, 4 Eur. Ct. H.R. 500 (1998); *United Communist Party of Turkey and Others v. Turkey*, 4 Eur. Ct. H.R. 1 (1998); *Freedom and Democracy Party (ÖZDEP) v. Turkey*, 31 Eur. Ct. H.R. 27 (1999).

¹⁷ Article 22 [International Covenant on Civil and Political Rights](#) (ICCPR), adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 23 March 1976, in accordance with Article 49.

each State Party undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, without distinction of any kind, such as ... political or other opinion ...

and with article 26, which guarantees equal and effective protection against discrimination on the grounds identified in article 2.

In October 2012 the United Nations Human Rights Council adopted resolution [21/16](#) and in October 2013 [resolution 24/5](#) in which the Council renewed its commitment to promoting and protecting the rights to freedom of peaceful assembly and of association. Resolution 21/16:

Recogniz[ed] the importance of the freedoms of peaceful assembly and of association, as well as the importance of civil society, to good governance, including through transparency and accountability, which is indispensable for building peaceful, prosperous and democratic societies;

Stresse[d] that respect for the rights to freedom of peaceful assembly and of association, in relation to civil society, contributes to addressing and resolving challenges and issues that are important to society, such as the environment ...[and] sustainable development¹⁸

The ICCPR protects freedom of expression, subject to limitations provided for by law and where necessary to protect the rights or reputations of others; or for the protection of national security or of public order, or of public health or morals.¹⁹

In Australia, freedom of speech is recognised as an implied constitutional right and protected insofar as it relates to political and governmental matters, as well as being protected by human rights legislation. Various High Court decisions concern freedom of communication²⁰ and others such as [Unions NSW v New South Wales](#) deal with limits on fundraising and how constraints on that should not invalidly burden the freedom of communication.²¹

Obtaining funding and fundraising activities are essential for enabling organisations to realise their objectives, as without funding NFP organisations are likely to be ineffective. Given the importance of donations as a source of funding for the NFP sector, any efforts to limit tax deductibility for donations to organisations engaged in political communication regarding the environment could be construed as burdening that freedom, and as being discriminatory on the basis of political opinion unless all other organisations are similarly burdened.

¹⁸ United Nations, General Assembly, 'Resolution adopted by the Human Rights Council 21/16, 'The rights to freedom of peaceful assembly and of association', Twenty-first session, Agenda item 3, 'Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development', 37th meeting, 27 September 2012, [UN Doc A/HRC/RES/21/16](#).

¹⁹ Article 19 ICCPR cited above.

²⁰ *Australian Capital Television v Commonwealth* (1992) 177 CLR 106; *Nationwide News v Wills* (1992) 177 CLR 1; *Theophanus v Herald & Weekly Times* (1994) 182 CLR 104; *Stephens v Western Australian Newspapers Ltd* (1994) 182 CLR 211; or was not actuated by malice: *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520.

²¹ *Unions NSW v New South Wales* [\[2013\] HCA 58](#).

In the United States, non-government organisation (NGOs), and NFP organisations' activities are recognised as inherent to democracy.²² In 2013 the US Supreme Court struck down legislation that imposed restrictions on the advocacy of NFP organisations if that advocacy was inconsistent with the policies of the Federal Government.²³ The Court held 6:2 that to compel as a condition of federal funding that the beliefs of the government of the day be affirmed, violated the First Amendment protection of free speech.

The Committee of Ministers of the Council of Europe, similarly, has recognised the value of NGOs' activities, and recommended support for NGOs through a range of tax concessions, including tax deductibility for donations.²⁴ Its review of the implementation of those recommendations in 2009 found that many European states granted tax concessions to NGOs or relieved them of establishment costs.²⁵

In Canada since 2003, charities have only been permitted to spend up to 10% of their resources on political activity and are prohibited from endorsing or opposing candidates, political platforms or political parties.²⁶ Since 2012 charities have had to complete a Political Activities Schedule and face deregistration if audits establish a breach of the 10% rule.²⁷

The Law Council considers that the Australian Government should maintain its current support for a range of activities of environmental organisations through tax concessions. If limits on the tax deductibility for advocacy activities undertaken by environmental organisations were to be progressed, this may raise issues of burdened freedoms of political communication and association, and possible discrimination on the basis of political opinion.

The administration of the Register and potential efficiency improvements

Raising the deductibility threshold to reduce the reporting burden for donors

The 2009 *Report on Australia's Future Tax System*, chaired by Dr Ken Henry AC (the Report) and reviewed the [tax deductibility of gifts to not-for-profit organisations](#).²⁸ The review noted that:

The decision to donate money to a NFP organisation may be motivated by a range of factors, including altruism, the possibility of material gain, family or business tradition, social affiliation, values or beliefs, and humanitarianism. Submissions suggest that donations are also influenced by the tax concessions provided to certain NFP

²² United States Department of State, '[Diplomacy in Action: Fact Sheet: Non-Governmental Organizations \(NGOs\) in the United States](#)'.

²³ *Agency for International Development v Alliance for Open Society International Inc* 570 US (2013).

²⁴ Council of Europe, Committee of Ministers, [Recommendation CM/Rec\(2007\)14 to member states on the legal status of non-governmental organisations in Europe](#), adopted by the Committee of Ministers on 10 October 2007 at the 1006th meeting of the Ministers' Deputies), esp at [57–8]. See: J Chia, M Harding and A O'Connell, 'Navigating The Politics of Charity: Reflections on *Aid/Watch Inc V Federal Commissioner of Taxation*', (2011) 35 *Melbourne University Law Review* 353–94.

²⁵ i.e Belgium, the Czech Republic, Germany, Liechtenstein, Moldova, the Netherlands, Portugal, the Slovak Republic, Ukraine: European Committee on Legal Co-operation (CDCJ), [Reply to the Committee of Ministers on the evaluation of the implementation of Recommendation CM/Rec\(2007\)14 on the legal status of non governmental organisations in Europe](#), Meeting, 20 October 2010.

²⁶ Government of Canada, Canada Revenue Agency, [Political Activities Policy Statement Reference number CPS-022](#), Effective date September 2, 2003.

²⁷ Imagine Canada, [Advocacy, Political Activity and Foreign Funding](#) 2013.

²⁸ Australian Government, [Australia's future tax system: Report to the Treasurer](#), December 2009 (Chair, Dr Ken Henry AC, Secretary to the Treasury), Commonwealth of Australia, 2010.

organisations. Donations over \$2 are tax deductible if they are made to a deductible gift recipient (DGR).

Donations of property and bequests can also be tax deductible for a donor.

The Report recognised that 'gifts are a longstanding and important source of funding for the NFP sector', and are supported through gift deductibility. The Report also noted the public policy benefits of deductibility policy:

It supports pluralism by giving individuals the opportunity to direct government expenditures to their preferred causes, provides transparency in the provision of government assistance, and is an administratively simple mechanism for both donors and the ATO (although donors incur some compliance costs from the requirement to hold receipts for audit purposes).

The Report recommended that gift deductibility be retained for donations to deductible gift recipients, with the deductibility threshold raised from \$2 to \$25 to reduce the reporting burden for donors who have to retain receipts to be entitled to the tax deduction, and for NFP organisations that need to issue a large number of receipts for small donations.²⁹ This recommendation was [not accepted by the former Government](#) at the rate of \$25, but raising the threshold by a lesser amount warrants re-consideration. It is recommended that the threshold be raised to a higher amount, following consultation with stakeholders. This would be a potential efficiency improvement for donors and NFPs.

Review rights

Decisions on applications to be entered on the Register are made by the Minister for the Environment in consultation with the Assistant Treasurer. The *Income Tax Assessment Act 1997* (Cth) provides that the Environment Secretary maintains the Register and that applicants for registration must comply with rules set by the Minister and the Environment Minister. The Environment Minister's involvement does not appear to be recognised in the Administrative Arrangements Order however.³⁰

There is no timeframe prescribed within which applicants have to be advised of the outcome of their application to be entered on the Register. It would be better if a reasonable timeframe were applied so that environmental NGOs are better able to fundraise to support their activities.

Tax deductibility applications that have been refused by the Treasurer can be challenged in the Administrative Appeals Tribunal, or under the *Administrative Decisions (Judicial Review) Act* or common law judicial review.³¹ These review rights should be explained in the Register Guidelines.

²⁹ Ibid, Recommendation 13.

³⁰ [Administrative Arrangements Order - C2015Q00002](#) 23/12/2014.

³¹ See for example *Sea Shepherd Australia Limited and Commissioner of Taxation* [\[2012\] AATA 520](#) .

Attachment A: Profile of the Law Council of Australia

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

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

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

- Australian Capital Territory Bar Association
- Australian Capital Territory Law Society
- Bar Association of Queensland Inc
- Law Institute of Victoria
- Law Society of New South Wales
- Law Society of South Australia
- Law Society of Tasmania
- Law Society Northern Territory
- Law Society of Western Australia
- New South Wales Bar Association
- Northern Territory Bar Association
- Queensland Law Society
- South Australian Bar Association
- Tasmanian Bar
- The Large Law Firm Group (LLFG)
- The Victorian Bar Inc
- Western Australian Bar Association

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

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

Members of the 2015 Executive are:

- Mr Duncan McConnel, President
- Mr Stuart Clark, President-Elect
- Ms Fiona McLeod SC, Treasurer
- Dr Christopher Kendall, Executive Member
- Mr Morry Bailes, Executive Member
- Mr Ian Brown, Executive Member

The Secretariat serves the Law Council nationally and is based in Canberra.