



Law Council
OF AUSTRALIA

Launch of the Australian Law Journal Landmark Edition on Security and Law in Australia

**Speech delivered online by Dr Jacoba Brasch QC, President of the
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I acknowledge the Traditional Custodians of the land on which we gather and pay my respects to their Elders past and present. I extend that respect to Aboriginal and Torres Strait Islander peoples here today.

I am honoured to have been invited to speak at the launch of this landmark issue of the Australian Law Journal dedicated to security and the law. This is an especially inspiring occasion for me for two important reasons:

- First, with us today, albeit virtually, is one of the greatest Australian jurists of our time, the Honourable Virginia Bell AC. Her Honour has been, and is, a doyen in the law, attaining the highest level of judicial appointment in this country as a Justice of the High Court of Australia. Justice Bell's achievements are numerous and exceptional.
- Second, we mark and celebrate the launch of this landmark edition of the Australian Law Journal, which is dedicated to the important question of security and the law as it applies in the Australian legal context. The calibre of the authorship, and scope and quality of the articles published are commensurate with the importance of the topic. In particular, I note, and with some poignancy, the article by The Hon Margaret Stone AO. Our profession and community suffered a great loss with Margaret's recent passing. She was one of this nation's foremost experts on security and the law. In particular, she was a leading light on ensuring our intelligence agencies are held to account, the issue of which she tackles in this final paper.

In a marvellous coincidence, the Australian Law Journal and the Law Council of Australia were established within six years of each other; in 1927 and 1933 respectively. They were established in an era when Australia's identity and formation as a nation were defined by the many impacts of the First World War.

At that time, Australia was seeking to find its place in a world order characterised by the settlement and international realignments following the War, along with the rapid growth of the world economy and expanded trade and capital markets.

This was a time of profound change, with the period between the establishment of the Australian Law Journal and the Law Council of Australia being overwhelmed by the Great Depression. This was a period in which the immutable nexus between the security of the world's nations and the welfare of its peoples were demonstrated to be closely related to economics, prosperity, public health, and well-being.

If we roll forward a century to now, our awareness of the interconnectedness of these elements has further been heightened.

National security in the modern world speaks to an array of evolving issues which confront humanity in the 21st century. National security touches upon the international and national economy, the health of all people, infrastructure, cyber security, climate change, food security, and health systems just to name a few.

The Law Council of Australia's policy advocacy workload on national security matters is as extensive and complex as the range of issues which emerge as Australia's Parliament and the nation's security agencies seek to come to terms with the scope of the dynamics defining our world in the 21st century.

The output of this vital work, and the need for appropriate high-quality legal expertise in apprehending the complexities and nuances of the contemporary national security environment, has resulted in a significant increase to our legal policy workload.

This is manifest in the large volume of complex and often time critical legislation which is introduced into the Australian Parliament, and the associated statutory reviews of existing powers.

The Law Council, established as the apex and unifying voice of the Australian legal profession, has throughout its 88-year history, devoted considerable resources to the scrutiny and review of national security laws. This has particularly been the case since the enactment of the first dedicated anti-terrorism laws in 2002.

The Law Council has always sought to improve the quality of the laws passed in this vital arena, through balancing the upholding of our national security, with, the preservation of the fundamental liberties which underpin our civil society.

Over the next three years in particular, the Government will implement its response to the 203 recommendations of the Comprehensive Review of National Intelligence Legislation. This is set to include a wholesale rewriting of Commonwealth electronic and surveillance laws.

In view of the fundamental importance of national security, and within the context of the changing geopolitical context, I am pleased to announce that the Law Council of Australia is establishing a dedicated National Security Committee for the first time since the LCA's inception.

We are honoured that the Committee's inaugural chair will be Lloyd Babb SC. For a decade, Lloyd served as the NSW Director of Public Prosecutions. He has an extensive and distinguished background in criminal law, and we are incredibly grateful he has agreed to lead the Law Council's contribution to the national debate on security and the law.

Under Lloyd's foundational guidance, the National Security Committee will provide advice on the operation, effectiveness and implications of Australia's national security laws while making sure our national security policies and laws contain appropriate safeguards for protecting the rights of individuals and are proportionate to any threat.

So just as the Australian Law Journal and the Law Council of Australia were borne of the same era in Australia early last century, they come together in 2021 to mark and reflect upon the importance of security and the law.

We are here today as custodians of the law. The law has no more important a role to play than that of shaping the world in which our citizens live; buttressed by the protection of their security and the preservation of liberty.

The renowned British historian Niall Ferguson has recently reflected:

"Much that lies ahead will follow the ancient, perennial rules of human history. An incumbent power will feel menaced by a rising power. Another demagogue will feel frustrated by the constraints of the Constitution. Power will corrupt and absolute power will corrupt absolutely. This much we know from history and from great literature. But in other respects, because of changes in science, medicine and technology, the future will be different, and historians are not

well qualified to foresee that kind of discontinuity except to affirm that it happens.”¹

Together, let us use the law as a beacon and a compass to guide us in navigating our way to a future which is secure and in which our citizens are free.

I commend this ALJ issue to you and thank all who contributed to it.

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¹ <https://www.penguin.com.au/books/doom-the-politics-of-catastrophe-9780241501764>