

**Christopher Blanden QC**  
**President**  
**Victorian Bar Inc**

Dear Chris

**Membership of the Law Council of Australia**

We are very concerned about the Victorian Bar's decision to terminate its membership of the Law Council of Australia. The decision is very damaging to the Victorian Bar, its members, the Law Council and, through both organisations, to the public good.

The Victorian Bar has played a leading role in Australia's legal profession and in the life of the nation. Failure to maintain membership of the LCA – the national profession's direct voice to the national government – would seriously damage the Bar's claim to a leadership role and its reputation with solicitors, clients, government and the general public.

The Commonwealth jurisdiction is a very large part of the Bar's work (tax, corporations law, immigration, administrative law, family law, criminal law, employment and industrial law, constitutional law, indigenous legal issues, arbitration, insolvency, intellectual property, etc.) Victorian barristers have disproportionately led the LCA and many of its committees in these areas for many years. This has provided a voice at the table on so many of the issues which touch Bar members' interests in relation to Commonwealth legislation, courts, tribunals, government departments and agencies and to the regulation of the national profession. Moreover, it is a forum within which the national profession can meet and resolve practice issues - notably, equal opportunities for women barristers to secure Commonwealth work and to be free from sexual harassment - to choose but two recent issues. Further, there are risks to

the Bar if it absents itself from this forum as well as the very significant embarrassment of not bearing a fair share of its obligations as a professional body.

As the primary gatherer of tax revenue, the Commonwealth government is a major source of legal aid funds, especially for family law and criminal law. The LCA's "Legal Aid Matters" campaign in 2016 and its lobbying of both government and cross-bench senators have been vital in the face of government cost-cutting. The announcement late last year of an enquiry into the cost of the Commonwealth's Expensive Criminal Cases Fund (a \$20m fund) is yet another example of the need for high quality representation on an issue of vital interest to our members. The great danger is that these cases will be merged into general legal aid funds and overwhelm the system. Mr Robert Cornall AO who conducted that Inquiry drew heavily on the LCA for input to his enquiry.

Beyond self-interest, there is a further obligation for the Bar to contribute its expertise and resources as a *pro bono* contribution to the maintenance and development of the Australian legal system.

It may be that at a time of extreme budgetary pressure there is a tendency to think of these contributions to the public good as a luxury which cannot be afforded. We do not share that view. But beyond that, it is in the long-term self-interest of the Victorian Bar to continue to make its contribution – both in in kind and in cash – to the work of the LCA.

Last year alone, the LCA lodged 181 submissions on issues of vital national significance across the legal spectrum. Senior counsel from the LCA's specialist committees regularly join the President of the LCA to present LCA's submissions on bills of great significance to national security and individual rights to hearings of the Parliamentary Joint Committee on Intelligence and Security, to name one example. Last year they included bills on ASIO's powers, access to international Cloud data bases (without any protection for client legal privilege) and various

novel detention order powers under terrorism legislation. The written submissions - prepared by the LCA's legal officers and overseen by the LCA's expert committees - are detailed, of consistently high quality and always fulsomely acknowledged by both the chair of that Committee, Mr Andrew Hastie MP, and by the Shadow-Attorney-General, Mr Mark Dreyfus QC MP. Beyond that, Senate cross-benchers actively seek advice from the LCA on legislation and legal policy issues, notably in recent times with respect to the Family Court and legal aid. Because of the Senate numbers, this is an extremely valuable audience

What influence the legal profession can have on the Commonwealth Government depends heavily on the quality of those submissions and in turn on the quality of the legal officers who prepare them, backed by the Law Council's expert committees. However, influence also depends on the representativeness of the Law Council itself. Losing the Victorian Bar as a member would be a substantial blow to the influence of the Law Council and to the legal profession at the national level. It would also lose its link to the foundational contribution made by Alex Chernov QC and the leadership of past presidents from the Victorian Bar including most recently Ross Ray, Michael Colbran, and Fiona McLeod. The loss of the opportunity to have one of our number lead the national profession and its important sections and committees would also damage the prestige of the Victorian Bar.

We understand that the Bar has not been able to agree to pay the per capita contribution of \$106 for membership of the LCA. It has proposed a voluntary contribution scheme or a fixed amount of \$25 per capita. It is difficult to see how a subscription-based national organisation like the LCA (or the Victorian Bar itself) could accept a voluntary subscription scheme. We would also say that \$106 seems to be a very modest fee for an Australian Legal Practitioner, especially when it is tax deductible and, presumably like Bar subscriptions, subject to waiver in cases of financial hardship. We understand that the Victorian Bar has suffered severe impact

from the Covid pandemic, but we note that the Law Institute is continuing its membership and paying its subscription to the Law Council.

The better view is that the interests of the Victorian Bar are best served by continuing to take a leading role at the national level. The Victorian Bar's contribution represents 3% of the Law Council's funding. The large percentage of the funding comes from solicitors. The Victorian Bar has highly leveraged that financial contribution due to its vastly disproportionate influence on the leadership, work and policies of the LCA.

The Victorian Bar's annual contribution to the LCA funding is some \$230,000. That would cover the overall cost of one legal policy officer and some ancillary services. In turn it has input to issues across the spectrum. In terms of a contribution to legal aid funding alone, it seems to be a small price to pay. During the Legal Aid Matters Campaign in 2016, the media coverage alone would have cost many times that amount. And that is to say nothing about the extensive media coverage the Law Council was able to obtain through the Justice Project Report in 2017-18 and has sustained on large national legal issues as they arise. This coverage is vital to the Law Council's lobbying on legal aid and other issues of national significance, in the direct interests of both its members and the public.

This letter has been prepared by seeking the views of past leaders of the Bar and of representative leaders of practice areas that are chiefly influenced by federal legislation and policy. It has been strongly supported, and we believe expresses the views of many more members of the Bar whom we have not had the opportunity to contact in this short time frame.

We urge the Victorian Bar to reconsider this decision and to avoid the damage to both bodies and to the public interest.

Yours sincerely

Martin	Bartfeld QC
Jennifer	Batrouney AM QC
Robin	Brett QC
Julian	Burnside AO QC
Stephen	Charles AO QC
Michael	Colbran QC
Matthew	Collins AM QC
Tom	Cordiner QC
Clyde	Croft AM SC
Dermott	Dann QC
Lisa	De Ferrari SC
Geoffrey	Dickson QC
Rachel	Doyle SC
Sally	Flynn QC
George	Golvan AM QC
Colin	Golvan QC
Peter R D	Gray QC
Michael	Gronow QC
David	Hallowes SC
Peter	Hanks QC
Kristine	Hanscombe QC
Claire	Harris QC
David	Harper AM QC
Peter	Heerey AM QC
Ian	Hill QC

Chris	Horan QC
Aggy	Kapitaniak
Tom	Keely SC
Jonathan	Kirkwood
David	Levin QC
Lex	Lasry AM QC
Fiona	McLeod AO SC
Julian	McMahon AC SC
Ron	Meldrum QC
Ron	Merkel QC
Simon	Molesworth AO QC
Albert	Monichino QC
Jonathon	Moore QC
Peter	Morrissey SC
Tony	Neal QC
David	Neal SC
Penelope	Neskovcin QC
Tony	Pagone QC
Alistair	Pound SC
Alexandra	Richards QC
Robert	Richter QC
Sam	Rosewarne
Charles	Scerri QC
Martin	Scott QC
Ruth	Shann
Anne	Sheehan
Paul	Smallwood

Michael	Stanton
Andrew	Strum QC
Helen M	Symon QC
Tim	Tobin SC
Minal	Vohra SC
Peter	Willis SC
Neil	Young QC
W.Brind	Zichy-Woinarski QC

Criminal Bar Association

Family Law Bar Association

Womens Bar Association