



Australia - New Zealand Scrutiny of Legislation Conference

Perth, Western Australia, 11 -14 July 2016

PARLIAMENTARY SCRUTINY, PARLIAMENTARY SOVEREIGNTY: WHERE ARE WE NOW AND WHERE ARE WE HEADED?

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Conference Program

Australia - New Zealand Scrutiny of Legislation Conference

**Parliamentary Scrutiny, Parliamentary Sovereignty:
Where are we now and where are we headed?**

11 - 14 July 2016
Parliament House, Perth





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Monday, 11 July 2016

6.00pm – 7.30pm

Welcome Reception

Government House, St Georges Terrace, Perth

Delegates welcomed by Her Excellency the Honourable Kerry Sanderson AC,
Governor of Western Australia



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PARLIAMENTARY SCRUTINY, PARLIAMENTARY SOVEREIGNTY: WHERE ARE WE NOW AND WHERE ARE WE HEADED?

Day 1: Tuesday, 12 July 2016

8.00 – 9.00 **Registration and refreshments** — Forrest Foyer, Parliament House

Session 1 **Conference opening and keynote speaker**

9.00 **Welcome to Country**
Dr Robert Francis Isaacs AM OAM JP

9.10 **Opening of Conference**
Her Excellency the Honourable Kerry Sanderson AC
Governor of Western Australia

9.20 **Introduction of keynote speaker**
Hon Adele Farina MLC, Deputy President, Legislative Council,
Parliament of Western Australia

9.25 **Keynote speaker**
The Honourable Wayne Martin AC, Chief Justice of Western Australia
Too many cooks? Parliament, the Courts and the scrutiny of delegated legislation
(The Chief Justice will take questions after his presentation)

10.00 **Morning tea**

Session 2 **Rights and freedoms and their role in scrutiny**

Session Chair: Mr Alister Henskens SC MP

10.25 **Keynote speaker**
Professor George Williams AO
How effective is the Federal Parliament's new scrutiny regime for human rights?
(Professor Williams will take questions after his presentation)

11.00 *Parliamentary Bill of Rights scrutiny in New Zealand*
Mr Tim Workman, Manager (House), House of Representatives,
Parliament of New Zealand

11.25 *The role of human rights advisors under Victoria's Charter*
Hon Richard Dalla-Riva MLC, Deputy Chair, and Ms Sarala Fitzgerald, Human Rights
Advisor, Scrutiny of Acts and Regulations Committee, Parliament of Victoria

11.50 Questions for speakers and general discussion

12.10 **Lunch** — Members' Dining Room

1.10 **Conference Photo** — Assemble at the front of Parliament House



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Session 3

Session Chair:

Safeguarding parliamentary sovereignty

Dr Harry Phillips AM

1.20

The concept of 'the same substance': What does the Perrett judgment mean for parliamentary scrutiny

Mr Ivan Powell, Committee Secretary, Senate Standing Committee on Regulations and Ordinances, Parliament of Australia

1.45

Comparative approaches to legislative scrutiny

Mr Michael Johnsen MP, Legislation Review Committee, Parliament of New South Wales

2.10

A case study in legislative scrutiny: Legislative consideration in a second Legislative Assembly chamber

Ms Janine Freeman MLA, Legislative Assembly, Parliament of Western Australia

2.35

Questions for speakers and general discussion

3.00

Afternoon tea

Session 4

Session Chair:

Safeguarding parliamentary sovereignty and facilitated panel discussion

Hon Robin Chapple MLC

3.25

Scrutiny committees: A vehicle to safeguarding the Constitution, federalism and parliamentary sovereignty

Mr Glenn Ryall, Principal Research Officer, Senate Standing Committee for the Scrutiny of Bills and Ms Jessica Strout, Acting Principal Research Officer, Senate Standing Committee on Regulations and Ordinances, Parliament of Australia

3.50

Dangerous trends in legislation

Hon Adele Farina MLC, Deputy President, Legislative Council, Parliament of Western Australia

4.15 – 5.00

Facilitated panel discussion

Scrutiny of primary legislation principles and challenges: Where are we now and where are we headed?

Facilitator: Hon Adele Farina MLC

Panel Members: Professor George Williams AO, Mr Michael Johnsen MP, Hon Richard Dalla-Riva MLC



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Day 2: Wednesday, 13 July 2016

8.30 Refreshments

Session 5 Delegated legislation in the 21st century

9.00 Introduction of keynote speaker
Senator Linda Reynolds, Parliament of Australia

9.05 **Keynote speaker**
Mr Stephen Argument
Executive law making in the 21st century: Delegation not subordination
(Mr Argument will take questions after his presentation)

9.50 *The evolution of the New Zealand Regulations Review Committee: Systems, scrutiny and complaint*
Hon David Cunliffe MP, Chairperson, Regulations Review Committee,
House of Representatives, Parliament of New Zealand

10.20 Morning tea

Session 6 Challenges in scrutinising delegated legislation

Session Chair: Mr Paul Grant

10.45 *A gap in scrutiny? Access to Australian Standards adopted in delegated legislation*
Mr Peter Abetz MLA, Chair, Joint Standing Committee on Delegated Legislation,
Parliament of Western Australia

11.10 *Uniform legislation and parliamentary sovereignty — the case of heavy vehicle regulations in Tasmania*
Hon Tania Rattray MLC, Chair, Parliamentary Standing Committee on Subordinate Legislation, Parliament of Tasmania

11.35 Questions for speakers and general discussion

12.00 Lunch — Parliament Courtyard

Session 7 Perspectives on delegated legislation

Session Chair: Mr Stephen Argument

1.00 *Supporting reports to regulations*
Hon Gerry Kandelaars MLC, Presiding Member, Legislative Review Committee,
Parliament of South Australia



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- 1.25 **Facilitated panel discussion**
Scrutiny of delegated legislation: The appropriate delegation of legislative power, the rise of subdelegation and other challenges
- Facilitator: Mr Stephen Argument
Panel Members: Mr Peter Abetz MLA, Hon Gerry Kandelaars MLC, and Hon Tania Rattray MLC
- An international perspective**
- 2.25 *Nepal's new Constitution, its federal system, human rights and peace building agendas*
Mr Janak Raj Giri, former Minister and MP, Bajura District,
Federal Democratic Republic of Nepal
- 2.50 **Afternoon tea**
- Session 8 Scrutiny in the Pacific**
Session Chair: Hon John Castrilli MLA
- 3.15 *Lawmaking in the Fijian Parliament since 2014 — a snapshot of the constitutional and procedural framework*
Mr Joeli Ditoka, Director Legislature, Parliament of the Republic of Fiji
- 3.35 *The law making process in the Parliament of Fiji since 2014*
Hon Lorna Eden MP, Assistant Minister for Local Government, Housing and Environment, and Chair, Standing Committee on Economic Affairs
Hon Niko Nawaikula MP, Member, Standing Committee on Justice, Law and Human Rights
Parliament of the Republic of Fiji
- 4.15 – 4.40 Questions for speakers and general discussion
- 6:30 **Pre dinner drinks — Members' Lounge**
- 7.00 **CONFERENCE DINNER — Members' Dining Room**
Introduction of dinner speaker: Professor David Black
Dinner speaker: Mr Peter Kennedy, Political Journalist
Electioneering: Then and now





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Day 3: Thursday, 14 July 2016

8.45 Refreshments or optional tour of Parliament House (meet at front entrance)

Session 9 **The role of international bodies and statutory interpretation**

Session Chair: Dr Colin Huntly

9.15 *It's a small world (after all): The role of international bodies in legislative scrutiny*
Ms Lorraine Finlay, Law Lecturer, Murdoch University
(Time allocated includes time for questions)

9.50 *How far can Hansard help? The use of Parliamentary material in fixing ambiguity*
Assistant Professor Jacinta Dharmananda, University of Western Australia
(Time allocated includes time for questions)

10.25 **Morning tea**

Session 10 **Jurisdiction round up and conference close**

10.55 Introduction to session
Hon Adele Farina MLC

Jurisdiction round up

11:00 Commonwealth of Australia
11.10 New Zealand
11.20 Australian Capital Territory
11.30 Queensland
11.40 South Australia
11.50 New South Wales
12.00 Victoria
12.10 Tasmania
12.20 Western Australia

12.30 **Conference close**

Conference concludes with drinks in the Library, Parliament House, at 12.45pm



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Keynote Speakers

Chief Justice Wayne Martin AC QC



Chief Justice Wayne Stewart Martin AC QC was appointed to the Supreme Court of Western Australia on 1 May 2006. He was appointed as a Judge of the Court, a Judge of the Court of Appeal and as the Chief Justice of Western Australia. Chief Justice Martin was appointed a Companion in the General Division of the Order of Australia on 11 June 2012.

He was born on 28 December 1952 and attended North Perth Primary School and Christchurch Grammar School. He graduated with a Bachelor of Laws (First Class Honours) in 1973 from the University of Western Australia and was an articled clerk with Lavan and Walsh, Perth.

Chief Justice Martin completed a Master of Laws from the University of London in 1975 and was admitted to practice in Western Australia in 1977. After being a Senior Litigation Partner with Keall Brinsden, Perth, from 1984 to 1988, he joined the Independent Bar in 1988 and was appointed a Queens Counsel 1993. From 2001 to 2003, he was Counsel assisting the HIH Royal Commission in Sydney.

He served as President of the WA Bar Association from 1996 to 1999, Chairman of the Law Reform Commission of WA from 1996 to 2001, President of the Law Society in 2006 and Director, Law Council of Australia in 2006.

Professor George Williams AO



George Williams AO is the Anthony Mason Professor, a Scientia Professor and the Foundation Director of the Gilbert + Tobin Centre of Public Law at the Faculty of Law, University of New South Wales. He has written and edited 34 books, including Australian Constitutional Law and Theory and The Oxford Companion to the High Court of Australia. As a barrister, he has appeared in the High Court in a number of cases over the past two decades, including on freedom of speech, freedom from racial discrimination and the rule of law. He has also appeared in the Supreme Court and Court of Appeal of Fiji, including on the legality of the 2000 coup.

He has served on a number of public inquiries. As chair of the Victorian Human Rights Consultation Committee in 2005 he helped bring about Australia's first State bill of rights, the Victorian Charter of Human Rights and Responsibilities. In 2007 he chaired a NSW Government inquiry into Options for a New National Industrial Relations System that produced the historic referral of State industrial power over the private sector to the Commonwealth. He also served on a High Level Advisory Group on Federal-State Relations to Kevin Rudd MP. More recently, he was a member of the NSW Government's Panel to Examine Recall Elections and assisted the Northern Territory in its renewed attempt to become Australia's seventh State as a member of its Constitutional Convention Committee.

He is a well-known media commentator on legal issues and is a columnist for the Sydney Morning Herald.



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Mr Stephen Argument

Stephen Argument is the co-author of the 2nd, 3rd and 4th editions of Professor Dennis Pearce's text, *Delegated Legislation in Australia* (LexisNexis). Stephen and Professor Pearce have recently agreed to write the 5th edition of *Delegated Legislation in Australia*, to be published in 2017.

Stephen has been a lawyer, in Canberra, for over 30 years. During that time, he has worked for and with parliamentary scrutiny committees for (on and off) over 25 years, including as Secretary to the Senate Standing Committee for the Scrutiny of Bills, from 1990 to 1993.

Stephen has also worked as a legal adviser for Commonwealth government agencies and for national law firms (providing legal advice to Commonwealth government agencies). Between 2007 and 2013, Stephen worked as a legislative drafter with the (Commonwealth) Office of Legislative Drafting and Publishing and, later (when the two offices were merged), the Office of Parliamentary Counsel.

Since 2005, Stephen has worked as the Legal Adviser (Subordinate Legislation) to the ACT Legislative Assembly's Standing Committee on Justice and Community Safety (performing the duties of a Scrutiny of Bills and Subordinate Legislation Committee). Since January 2013, Stephen has also worked as the Legal Adviser to the Senate Standing Committee on Regulations and Ordinances.

Conference dinner speaker

Mr Peter Kennedy

Electioneering: Then and Now

Peter Kennedy retired from daily journalism in December 2010, after 20 years with the ABC - in both radio and television.

He is Perth born and educated, graduating with a major in economics from the University of Western Australia. Initially a high school teacher in Bunbury, he switched to journalism in 1970 at *The West Australian*. He covered politics in Sydney and Canberra for The Sydney Morning Herald from 1977 to 1984, and was press secretary to the Western Australian Deputy Premier Malcolm Bryce in the mid 1980s.

At the ABC from 1990 to 2010, Peter presented both the Morning and Drive programs on 720 ABC Perth, and was later the long term state political reporter on ABC Television News.

Peter is the author of a recently published book on the 11 Western Australian premiers he has known and interviewed, and is an adjunct professor at the University of Notre Dame in Fremantle. He comments regularly on political issues.

Peter is married to Chris and has a daughter and a son, and six grandchildren.