

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
ATTORNEY-GENERAL'S DEPARTMENT

Program 1.1

Question No. 70

Senator Barnett asked the following question at the hearing on 25 May 2010:

Has the Australian Law Council written to the government expressing its concern on the demise of the ARC? If so, could you provide a copy of the correspondence and also the government's response?

The answer to the honourable senator's question is as follows:

On 13 May 2010, Glenn Ferguson, President of the Law Council of Australia, wrote to the Attorney-General about the operation of the Administrative Review Council. The Attorney-General responded to this letter on 21 June 2010.

A copy of both these letters is provided.



Law Council
OF AUSTRALIA

*From the Office of
the President*

Glenn Ferguson
president@lawcouncil.asn.au

The Hon Robert McClelland MP
Attorney-General
Parliament House
CANBERRA ACT 2600

Dear Attorney,

Thank you for your 21 December 2009 letter replying to my predecessor's 23 October 2009 letter about the concerns expressed to me by the Law Council's Administrative Law Committee (the Committee) about the effective operation of the Administrative Review Council (ARC).

I note the assurances in your letter that there is an ongoing role for the ARC and that your Department will ensure that adequate support arrangements are maintained to enable the ARC to undertake its role. However, the Committee has advised me of the following concerns it still holds:

- no appointment of a replacement has been announced since the resignation of the former President of the ARC in October 2009;
- there has been no Executive Director of the Council's Secretariat since the last occupant's term in that position ended in 2008; and
- there are no current references to the ARC for inquiry and report under s51B of the *Administrative Appeals Tribunal Act 1975* (AAT Act), nor is there any other ongoing project on which the ARC is engaged.

The ARC has important statutory functions to perform. It is the Law Council's concern that with the current lack of leadership, secretariat support, and references or other ongoing work the ARC will be unable to fulfil its central and statutorily mandated review, recommendatory, inquiry, and educational roles as set out in s51 of the AAT Act.

I would therefore urge you to consider the appointment of a President, the reinstatement of an adequately resourced Secretariat, and the formal referral of appropriate matters to the ARC for inquiry and report, so that it may resume a strong and appropriate guardianship and advisory role over an increasingly important area of law which has profound implications for the rights of individuals and corporations in seeking review of government decisions.

Yours sincerely,

Glenn Ferguson

13 May 2010

GPO Box 989, Canberra
ACT 2601, DX 5719 Canberra
19, Eureka St Braddon ACT 2612

Telephone +61 2 6246 3788
Facsimile +61 2 6246 6579

Law Council of Australia Limited
ABN 85 005 260 622
www.lawcouncil.asn.au



ATTORNEY-GENERAL
THE HON ROBERT McCLELLAND MP

10/11022-03, MC10/7793

Mr Glenn Ferguson
President
Law Council of Australia
GPO Box 1989
CANBERRA ACT 2601

Dear Mr Ferguson

Thank you for your letter of 13 May 2010 about the operation and ongoing role of the Administrative Review Council.

You would probably by now be aware that Mr Colin Neave AM, Chief Ombudsman of the Financial Ombudsman Service, was appointed as President of the Council on 20 May 2010. Mr Neave has extensive experience at a high level in both government and business and I have no doubt that the Council will thrive under his leadership. I expect to announce further appointments to the Council in the near future.

My Department continues to provide support for the Council's work and dedicated officers are assigned to manage its work. Those resources are no longer limited to a Secretariat and the Council now has access to a broader base of both administrative and legal support from within my Department. I am confident that the change in administrative and resourcing arrangements has not compromised the Council's effective operation.

I consider the work of the Council important to the maintenance of an effective administrative law system. Looking ahead, I will be seeking the Council's views on a number of initiatives that fall within the Government's agenda to improve access to justice in the administrative law system. I understand that the new President is convening a meeting of the Council very soon to set a forward work plan for the Council that will complement work being done by my Department.

The action officer for this matter in my Department is Janet Power who can be contacted on (02) 6141 3055.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Robert McClelland', written over a light blue horizontal line.

Robert McClelland