

Federal Criminal Justice Forum

Program

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Minister's Introduction

Thank you for accepting my invitation to be a part of the Federal Criminal Justice Forum, in Canberra on 29 September 2008 at Old Parliament House. I am pleased that many of you are able to join me for the pre-Forum function, also at Old Parliament House, on the evening of Sunday 28 September.

As the Minister responsible for federal criminal justice, I am convening this Forum to enable a wide range of voices to be heard in formulating ideas for reform.

The Forum will bring together a diverse group of participants from the judiciary, the legal profession, law enforcement and government, academia, business, unions and community organisations. Each of you has a unique opportunity to help set the course for the future reform of federal criminal justice.

The Forum, and the lead-up activities to the Forum (including roundtables in Brisbane, Melbourne and Perth), are important steps in opening up the criminal law reform process to wider consultation and debate at the federal level. I will report publicly, including through the Forum website, on Forum outcomes and how they have been factored into the Government's reform priorities.

I look forward to you attending and contributing to the discussions and debate at the Forum.

A handwritten signature in blue ink, appearing to read 'Bob Debus', is positioned above the printed name.

HON BOB DEBUS MP

Forum Scope and Objectives

Objectives

The Forum has a number of objectives:

- to help give effect to the Government's commitment to engagement with the broader community (including all interested sectors, groups and individuals) in the development of federal criminal law and procedure
- to expose existing mechanisms for ongoing review of federal criminal law and procedure to greater scrutiny
- to provide a forum for free and open public debate in which there are no predetermined right or wrong answers
- to generate new and better informed ideas for reform of federal criminal law and procedure
- to facilitate a more proactive and forward looking approach to developing reforms to federal criminal law and procedure, and
- to assist, through engagement, interested groups and individuals to make a more effective contribution to development of federal criminal law and procedure.

Proposals

The kinds of proposals open for consideration include proposals for:

- changes to existing laws
- creation of new laws
- other policy responses to criminal justice challenges, and
- improving the process of law reform.

The Forum will not canvass or deal with national security laws or anti-terrorism laws. National security and anti-terrorism laws have been and will continue to be reviewed in other forums, such as the Parliamentary Joint Committee on Intelligence and Security reviews, the Clarke Inquiry and the 2010 Council of Australian Governments review. When and if amendments are developed on those topics, there will be full consultation about them at the relevant time.

Outcomes

The outcomes of the Forum will be reported on and considered by Government to assist in developing reform priorities. The Government will report on what has been done with the ideas emerging from the Forum and related activities, as part of its continuing engagement with the community in the process of criminal law reform. The Government's interest is in harnessing ideas from the community that are capable of being shaped into concrete policy actions.

Steering Committee

The Minister for Home Affairs, the Hon Bob Debus MP, appointed a Steering Committee to advise him on arrangements for the Federal Criminal Justice Forum. The members of the Steering Committee were as follows.

Dr Karl Alderson
Assistant Secretary, Criminal Law Branch (Chair)

Professor Arie Freiberg
Dean, Faculty of Law, Monash University, nominated by Australian and New Zealand Society of Criminology

Mr Hugh Donnelly
Director, Research and Sentencing, Judicial Commission of New South Wales

Ms Jaala Hinchcliffe
Senior Assistant Director, Policy, Commonwealth Director of Public Prosecutions

Ms Robyn Holder
Chair, Victim Support Australasia

Mr Rod Madgwick QC
Former Justice of the Federal Court of Australia

Professor Lorraine Mazerolle
Griffith University, nominated by the Centre of Excellence for Policing and Security

Mr David Neal SC
Barrister, Law Council of Australia Nominee

Mr Stephen Odgers SC
Barrister, Law Council of Australia Nominee

Dr Natalie Taylor
Program Manager, Justice and Crime Analysis, Australian Institute of Criminology
(alternate: Mr Matthew Willis)

Mr James Torr
CEO, Australian Federal Police Association

Professor David Weisbrot AM
President, Australian Law Reform Commission

Mr Peter Whowell
Manager, Legislative Program, Australian Federal Police

Program – Sunday 28 September 2008

5:30pm – 9:30pm

Old Parliament House, Canberra

5:30pm Pre-dinner function

The function commences in King's Hall at 5:30pm with canapés and drinks. Early registration for the Forum will be available during pre-dinner drinks.

A traditional Welcome to Country will be performed at 5:45pm by Aunty Agnes Shea, who is a local Ngunnawal Elder.

Participants will then be invited to write down their ideas and issues about federal criminal justice. These ideas and issues will then be placed on themed 'discussion boards', which will be on display throughout the Forum to help inform and stimulate discussion.

6:50pm Dinner

Dinner will be held in the Members Dining Room, with participants to be seated by 6.50pm. Between dinner and dessert, the Honourable Justice Glenn Martin of the Queensland Supreme Court will conduct a hypothetical, exploring the issues that arise in dealing with situations involving both social disadvantage and crime. Further details about the hypothetical are set out on page 6.

9:30pm After dinner transport arrangements

The function will conclude at 9:30pm.

Buses will be available to take participants to selected hotels. Taxis can be booked for those participants staying at other locations. To assist us in coordinating transport, a 'name and destination' sheet will be placed on each table at the dinner. If you require assistance to arrange transport to your hotel, please indicate your name and the name of your hotel on the sheet provided.

Hypothetical Panel

<p>The Hon Justice Glenn Martin (moderator)</p>	<p>Justice Martin was admitted as a Barrister in 1979. In 1998 he was appointed Senior Counsel. He was president of the Bar Association of Queensland from 2003-05 and President of the Australian Bar Association from 2006-07. In 2007 he was appointed to the Supreme Court of Queensland.</p>
<p>Mr Lloyd Babb SC</p>	<p>Mr Lloyd Babb SC is the NSW Crown Advocate. He is a former Director of the Criminal Law Review Division in the New South Wales Attorney General's Department and a former Crown Prosecutor.</p>
<p>Ms Robyn Holder</p>	<p>Ms Robyn Holder has been working in the justice field for nearly 20 years in the UK and Australia. She is an independent statutory advocate under the <i>Victims of Crime Act 1994</i> (ACT), is chair of Victim Support Australasia, and coordinates the ACT Family Violence Intervention Program. Prior to this, Ms Holder worked in the crime and violence prevention field in the UK.</p>
<p>Ms Debbie Kilroy</p>	<p>Ms Debbie Kilroy established and runs the support group Sisters Inside, an independent community organisation that exists to advocate for the human rights of women in the criminal justice system, and to address gaps in the services available to them. In 2003 she was awarded an Order of Australia for distinguished contribution to the community and was the recipient of a human rights medal in 2004.</p>
<p>The Hon Justice John McKechnie</p>	<p>Justice McKechnie was appointed to the Western Australian Supreme Court in 1999. Prior to that he took silk in 1989 and in 1991 was appointed Western Australia's first Director of Public Prosecutions.</p>
<p>Mr Simon Overland</p>	<p>Mr Simon Overland has been the Deputy Commissioner, Victoria Police, since 2006. He had been the Assistant Commissioner (Crime) from 2003 to 2006. Prior to joining Victoria Police, Mr Overland served for 19 years with the Australian Federal Police.</p>
<p>Ms Dina Yehia</p>	<p>Ms Dina Yehia has been practising law since 1990. She began her legal career as a solicitor with the Western Aboriginal Legal Service and then joined the Legal Aid Commission in Sydney as a trial advocate. She went to the Bar in 1999, and was appointed as a Public Defender soon after.</p>

The hypothetical has been prepared with the assistance of Mr Hugh Selby, ANU College of Law.

Program – Monday 29 September 2008

Old Parliament House, Canberra

Note: Attorney-General's Department officers will act as note-takers for discussions in all sessions on 29 September. These notes will be summarised and used in the preparation of the report on the Forum. They will help to inform future consideration of reform.

If you have any questions or need assistance during the day, please ask one of the Attorney-General's Department officers (who can be identified by their yellow lanyards).

The Forum is facilitated by Greg Joffe, of The NOUS Group <<http://www.nousgroup.com.au>>.

8:00am	Registration (light breakfast available)
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8:45am – 10:30am	Session 1 – Plenary Presentations
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Chair – *Her Honour Chief Judge Patricia M Wolfe, Chief Judge of the District Court of Queensland*

Opening address

Minister for Home Affairs, the Hon Bob Debus MP

Searching for a social democratic narrative in criminal justice

Professor David Brown, University of New South Wales

MEMBERS
DINING
ROOM 2

Proposals from the legal profession

Stephen Odgers SC, New South Wales Bar

Proposals from the policing profession

Jim Torr, Chief Executive, Australian Federal Police Association

Report on pre-Forum activities

Dr Karl Alderson, Federal Attorney-General's Department

At the end of this session and leading into morning tea, there is an opportunity for further issues and ideas to be added to the 'discussion boards' and for participants to look at the issues and ideas placed on these boards to date.

10:30am – 10:45am	Morning Tea
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10:45am – 12:15pm **Session 2 – Streamed Presentations and Discussions**

This session takes place across three concurrent streams, and explores a wide range of issues spanning the breadth of the federal criminal justice system. Each stream includes a series of short presentations, followed by comments and questions from the floor.

To maximise the number of perspectives that can be heard in each stream, presentations are to be kept strictly to five minutes. Session chairs have been asked to rigorously enforce this timing.

Each stream has been given a broad focus, to allow participants with varied interests to join in the discussion of a range of topics.

Stream A: Crime Threats, Crime Prevention and Community Justice

Chair – *Professor Lorraine Mazerolle, Griffith University*

Indigenous people and criminal justice

Gerry Moore, Aboriginal Legal Service (NSW/ACT) Limited

Future directions for crime prevention in Australia

Professor Peter Homel, Australian Institute of Criminology

MEMBERS
DINING
ROOM 1

Identity crime: issues for Australian policy makers

Professor Rick Sarre, University of South Australia

The problematic issue of financial crime

Dr George Gilligan, Monash University

Cracking the Code: emerging stress points in Chapter 2 jurisprudence

Associate Professor Ian Leader-Elliott, University of Adelaide

A proposal for a nationally coordinated response to fraud

Dr Russell Smith, Australian Institute of Criminology

Stream B: Policing and Rights

Chair – *Rod Madgwick QC*

Research, public policy and policing

Professor David Dixon, University of New South Wales

A civil liberties perspective

Terry O’Gorman AM, President, Australian Council for Civil Liberties

Models of covert policing regulation

Professor Simon Bronitt, Australian National University

MEMBERS
DINING
ROOM 2

The Australian Commission for Law Enforcement Integrity: strengths, weaknesses and prospects for effective oversight

Associate Professor Colleen Lewis, Monash University

Victims’ rights and assistance: a federal approach to improve outcomes for victims of crime

Michael O’Connell, Commissioner for Victims’ Rights (South Australia)

New technologies and forensics

Associate Professor Gary Edmond, University of New South Wales

A human rights approach to federal criminal justice reform

Dr Tessa Boyd-Caine, London School of Economics and Political Science

Overseas law enforcement cooperation

Julian McMahon, Australian Lawyers Alliance

Stream C: Court Process, Sentencing and Corrections

**MEMBERS
DINING
ROOM 3**

Chair – *Professor Arie Freiberg, Monash University*

A judicial perspective on running Commonwealth criminal trials
His Honour Justice Peter Johnson, New South Wales Supreme Court

Formalising pre-trial conferencing
Christopher Barry QC

Seven years of judicial review of Commonwealth criminal appeals
Hugh Donnelly, Judicial Commission of New South Wales

Children of prisoners: an issue for courts to consider in sentencing
Professor Michael Levy, ACT Health

**The jury – Where’s the Commonwealth’s TLC
Research, model uniform policies and protocols**
Professor Jill Hunter, University of New South Wales

Incorrect acquittals and exceptions to double jeopardy doctrine
Dr David Hamer, University of Queensland

12:15pm – 1:15pm

Lunch

1:15pm – 2:20pm	Session 3 – Developing Some Reform Ideas
MEMBERS DINING ROOM 1	<ul style="list-style-type: none"> • social justice and crime prevention • emerging crime threats
MEMBERS DINING ROOM 2	<ul style="list-style-type: none"> • framing of criminal laws • victims of crime • policing and investigations
MEMBERS DINING ROOM 3	<ul style="list-style-type: none"> • criminal trials • sentencing and offender management

Session 3 – Instructions for participants

Participants are invited to go to the room that corresponds with the topic area of greatest interest (see above). For example, if you are interested in victims of crime, you would go to Members Dining Room 2.

Participants are then asked to form small groups and explore opportunities for reform and the obstacles to be overcome in relation to two or more proposals in their chosen topic area.

The purpose of this session is for participants to transform some ideas that have emerged in the Forum into more rounded proposals for law reform.

The outcomes of this discussion exercise will form part of the reporting back in Session 4.

It is recommended that each small group work through the following steps.

1. Breaking into small groups

If there are more than 10 people involved in the discussion of your topic, divide into groups of no more than 8-10 participants. The facilitator and Attorney-General's Department officers will be available to assist in this process.

2. Identify proposals

Identify at least two (and no more than four) proposals that your small group will explore. You will have access to the 'discussion boards' on your topic to assist in identifying possible proposals. If small groups wish, Attorney-General's Department officers can make these known, to allow people to swap small groups if they wish. This should be done quickly, and participants should then remain with the same small group after that.

It is recommended that each small group identify quite different proposals to discuss, rather than similar or related ones. If reaching agreement on multiple topics proves difficult, take a quick vote.

3. Identify recording and report back leaders

Identify two persons from your group who will take the lead in writing down the outcomes of your discussion, and deliver the 'report back'. Where possible, chose two persons from quite different professional backgrounds or perspectives. That does not preclude others being involved in writing and reporting; it just ensures you will have someone to do these tasks. Although Attorney-General's Department officers will be in the room, for the integrity of the process it is important that Departmental officers are not recorders or reporters for small groups.

The report back leaders from each small group are asked to stay behind at afternoon tea for a briefing on the operation of Session 4. See also the instructions for Session 4 on page 13.

4. Allocate time

Make a rough timing plan for how long you will spend on each proposal, and keep that in mind as your discussion progresses. As a rough guide, you may wish to limit discussion to 25 minutes per proposal.

5. Discussion

5A Define the proposal: It is important to start with a clear definition of the proposal. Agree on this early and record it on the posters provided; this will help keep the discussion on course.

5B Identify the key steps to moving the proposal forward: In order to identify the key steps to moving the proposal forward you may want to consider:

- the barriers to reform, and
- possible opportunities for reform.

It may be helpful to work through the questions set out below. You don't need to be confident of the answers: the objective of the exercise is to brainstorm and see what you come up with.

Barriers to reform

- Why hasn't this proposal been pursued to date?
- Is there some cost associated with the proposal? Might that be a barrier?
- Is there likely to be resistance to the proposal from the community generally, or from some sector of the community or level of government?
- Are there risks that the proposal could be implemented and either not be a success or not be considered a success? What are these risks?
- Is there a risk that the proposal might be seen as not meriting priority within government?

Possible opportunities for reform

- How can each of the barriers identified in the previous step be overcome?
- Is there some experience of reform in another jurisdiction or another context that can inform how to pursue this proposal?
- How could the benefits of the proposal be demonstrated?
- How could the actual impact of the proposal be evaluated?

6. Record results

Ensure that the results of this discussion have been captured on the posters provided to each group. Take the time to make sure that your group is happy with how the results have been recorded.

If you use multiple sheets for one proposal, please make it clear that the sheets relate to the same proposal (or ask an Attorney-General's Department officer for a stapler).

7. Repeat steps 5 and 6 for the second proposal

The steps set out above are a guide only. Participants are free to approach the exercise in whichever way best suits the small group, and the proposals being discussed. There is no pre-determined format for the posters.

2:20pm – 2:35pm	Afternoon Tea
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The report back leaders from each small group are asked to stay behind at afternoon tea for a briefing on the operation of Session 4.

2:35pm – 3:00pm	Forum participant photograph
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3:00pm – 4:20pm	Session 4 – Rotating Report Back
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Session 4 – Instructions for participants

Reporting back from Session 3 will be on a rotating basis. There will be four sessions of 20 minutes each. The table below sets out the time, location and subject matter of each report back session. The facilitator and Attorney-General's Department staff will be on hand to assist with the logistics of this session.

3:00pm – 3:20pm	MEMBERS DINING ROOM 1	social justice and crime prevention
	MEMBERS DINING ROOM 2	policing and investigations
	MEMBERS DINING ROOM 3	sentencing & offender management
	MEMBERS BAR	framing of criminal laws
3:20pm – 3:40pm	MEMBERS DINING ROOM 1	social justice and crime prevention
	MEMBERS DINING ROOM 2	policing and investigations
	MEMBERS DINING ROOM 3	sentencing & offender management
	MEMBERS BAR	framing of criminal laws
3:40pm – 4:05pm	MEMBERS DINING ROOM 1	emerging crime threats
	MEMBERS DINING ROOM 2	victims of crime
	MEMBERS DINING ROOM 3	criminal trials
4:00pm – 4:20pm	MEMBERS DINING ROOM 1	emerging crime threats
	MEMBERS DINING ROOM 2	victims of crime
	MEMBERS DINING ROOM 3	criminal trials

The spokespersons for each small group on each topic will be asked to join together to in turn present on their respective small group discussion of proposals, the barriers to the proposals and the reform possibilities. Each small group's spokespersons will present twice. There will be an opportunity for general discussion among those present for the reports on each topic.

Participants are invited to listen to the report back on the four topics of most interest to them. The spokespersons for each small group will only be able to listen to the report back on two topics of interest to them (as they will be presenting during the other two sessions).

For example, assume that in Session 3 you were part of a small group that discussed policing and investigations.

- If you are the spokesperson for that group, you would remain in Members Dining Room 2 and would present your group's proposal at 3:00pm, and again at 3:20pm. You would be free to attend other reporting back presentations at 3:40pm and 4:00pm.
- If you are not the spokesperson for that group, you would be free to attend four different report back sessions. For example, if you were interested in social justice and crime prevention, you would go to Members Dining Room 1 at 3:00pm. You would then go to the room that has the topic that most interest to you for the next 20 minute session, and so on.

4:30pm – 4.40pm	Closing
MEMBERS DINING ROOM 2	<i>The Minister for Home Affairs, the Hon Bob Debus MP</i> Shuttle buses will be available from Old Parliament House to Canberra airport, departing at the conclusion of the Forum.

Evaluation Forms

All participants are asked to leave their completed Forum Evaluation Forms on the table or give them to an Attorney-General's Department officer.