Speech Title

Remarks by the Honourable Chief Justice Niall to the Victoria Law Foundation International Access to Justice Forum, Melbourne

28 October 2026

Good morning and welcome. Thank you to the Victoria Law Foundation and Monash University for organising this forum, and to the co-hosts Justice Greg Garde, Dr Rebekah Farrell, and Professor Steven Vaughn. I also thank Fiona McLeay and the Victorian Legal Services Board and Commissioner for sponsoring this event. I welcome fellow members of the Australian judiciary, as well as our international judicial colleagues. I also welcome members of the legal profession.

I would like to start by echoing the acknowledgment the Traditional Owners and Custodians of the land on which we gather, the Wurundjeri Woi Wurrung people of the Kulin Nation. I pay my respects to their Elders and Knowledge Holders and to any First Nations people joining us today.

Thank you for the invitation to open this conference. Its theme, 'Bridging the gap between empirical research and person-centred justice', invites courts to examine how the conditions we attach to the determination of rights affect their practical availability.

The courts' commitment to justice is expressed in an institutional form. A person seeking the protection of the law must encounter rules about commencement, evidence, representation, time and cost. Those rules serve essential purposes. Taken together, however, they also determine how much knowledge, money and endurance a person must possess before the merits of a dispute can be considered.

The relationship between institutional design and access to justice is therefore constitutive. The organisation of a court helps to determine whose rights can be vindicated, whose obligations can be enforced, and whose grievances remain beyond effective legal scrutiny.

That proposition has particular significance for civil justice, which is my principal focus today. A legal entitlement derives much of its practical force from the credible prospect of enforcement. Where that prospect is remote, the consequences extend beyond abandoned proceedings. They affect bargaining, compliance and the terms on which disputes are resolved without ever reaching a court.

Access is consequently a measure of the law's practical authority. A system may produce decisions of quality and still leave substantial parts of the community unable to obtain the benefit of its protections.

The institutional challenge is to preserve the qualities that justify judicial authority while reconsidering arrangements that unnecessarily restrict its reach. Empirical research can help us identify those arrangements and assess whether changing them improves justice.

Justice Michelle Gordon has offered a useful framework for that inquiry. In her 2025 address to the Australian Judicial Officers Association, her Honour described justice as having three

interrelated aspects: substantive, procedural and participatory. They concern, respectively, the legally correct result, fairness in the process of decision-making, and meaningful involvement in legal processes affecting the individual.[1]

The significance of this framework lies in the relationship between its elements. Participation can improve the court's understanding of the facts and arguments. Fair procedures make participation effective. Each contributes to the conditions in which a sound determination becomes possible.

It follows that procedure on its own is not justice. An additional procedural safeguard may protect a legitimate interest but may also impose a burden that prevents a person from advancing that interest at all. The justification for a procedural requirement must encompass both effects.

Assessing those effects requires an understanding of how institutional demands interact with people's resources, capabilities and circumstances. Courts cannot acquire that understanding solely through the proceedings before them: the experiences of those who abandon a claim, or never contemplate bringing one, are also relevant to the adequacy of institutional arrangements. Empirical research can bring those experiences into view, providing a foundation for examining whether the procedures through which rights are enforced are accessible to the people who hold them.

[1] Michelle Gordon, 'Justice in a Changing World — The Responsive Bench' (Speech, Australian Judicial Officers Association Colloquium, 10 October 2025).

An example of research assisting courts

The Victoria Law Foundation's Public Understanding of Law Survey (PULS) illustrates the contribution such research can make to institutional design. Drawing on a sample of over 6,000 Victorian adults, predominantly interviewed face to face, it begins with people's experience of legal problems. [2]

For courts, this perspective changes the field of view. Our records describe disputes that have reached us after a process of recognition, advice, decision and expenditure. They cannot, on their own, reveal the problems excluded along the way. The cases we see are a selected part of the community's experience of law. Using legal research such as PULS, enables courts to consider the relationship between legal need and institutional provision, including needs that may never become visible to the court. It invites courts to assess their arrangements by reference to the circumstances in which people encounter the law and their practical capacity to obtain its protection.

The court's own metrics do not necessarily provide the full access to justice perspective. For example, a court could improve its case resolution timeframe while becoming less accessible to people unable to meet the demands of commencement. Equally, an increase in proceedings could reflect improved access rather than institutional failure. Caseload measures become intelligible only when situated within a broader account of legal need.

PULS found that the under its broader definition of expert assistance, 78 per cent of legal need went unmet. That figure relates to problems giving rise to legal need, assessed through a

[2] Nigel J Balmer et al, *The Public Understanding of Law Survey (PULS) Volume 1: Everyday Problems and Legal Need* (Report, Victoria Law Foundation, August 2023) 33-4.

framework that includes seriousness, duration, capability and adequacy of assistance. It is not a measure of the proportion of Victorians unable to find a lawyer.[3]

The institutional implication is that contact with a service cannot be equated with a need being met. Advice may be obtained without enabling a person to take the next necessary step. We need to examine what assistance makes possible within the process that follows it.

The second part of the study found that 63 per cent of respondents were confident of achieving a fair outcome they would be happy with in a substantial legal disagreement. When the scenario involved appearing unrepresented in court against a barrister, confidence fell to 26 per cent.[4] This measures anticipated confidence, not the fairness of an actual hearing. Nevertheless, it exposes the distance between making a process formally available and providing a practicable opportunity to use it.

The third part of the survey found that respondents in the lowest combined skills and confidence group were more likely to have proceedings brought against them, while those in the highest group were more likely to initiate proceedings.[5] Accessibility must therefore include the circumstances of people compelled to respond to the law. A defendant's difficulty participating cannot be addressed simply by making it easier for an applicant to commence.

[3] Ibid 17, 20.

[4] Nigel J Balmer et al, *The Public Understanding of Law Survey (PULS) Volume 2: Understanding and Capability* (Report, Victoria Law Foundation, February 2024) 54.

[5] Nigel J Balmer et al, *The Public Understanding of Law Survey (PULS) Volume 3: A New Perspective on Legal Need and Legal Capability* (Report, Victoria Law Foundation, August 2024) 22–3.

Designing an access to justice remedy

The PULS results demonstrate that access to justice from an institutional perspective is complex and multi-factorial. A common theme among both user experience data, and research, is the cost involved in seeking resolution to a civil matter through the courts. Legal costs are a significant structural barrier to access to justice, particularly where problems are sufficiently serious or complex to require professional assistance.

The 2012 Legal Australia-Wide Survey found that expense was the most frequently reported barrier to obtaining help where a legal adviser was the main adviser, affecting 23 per cent of those problems. Its analysis suggested that costs were especially consequential for the more serious problems for which people sought expert advice.[6]

The Productivity Commission's 2014 inquiry similarly found that substantial legal expenses, upfront payments and exposure to an adverse costs order could prevent people with meritorious claims from pursuing justice. It highlighted the position of low- and middle-income households whose resources exceeded legal aid eligibility thresholds but were insufficient to absorb significant litigation costs.[7] These findings suggest that affordability shapes whether legal rights can be exercised at all: the formal availability of a court or remedy offers limited protection when the financial burden of invoking it is beyond a person's means.

An expensive dispute-resolution model therefore imposes a threshold that may bear little relationship to the legal merit or personal importance of a claim. When pursuing a right costs more than its practical value, abandonment may be a rational response to the system's design

[6] Christine Coumarelos et al, *Legal Australia-Wide Survey: Legal Need in Australia* (Report, Law and Justice Foundation of New South Wales, August 2012) 123, 216-17.
[7] Productivity Commission, *Access to Justice Arrangements: Overview* (Inquiry Report No 72, 5 September 2014) 20.

which does not equate to facilitating access to justice. The resulting absence of litigation should not reassure us about the adequacy of legal protection.

Legal assistance funding and pro-bono work remain indispensable. But their contribution cannot absolve courts from examining the volume and character of work their procedures generate. Otherwise, we risk devoting scarce assistance to helping people satisfy demands that could themselves be reduced.

Victoria's Civil Procedure Act makes the just, efficient, timely and cost-effective resolution of the real issues in dispute the overarching purpose of civil procedure. Its provisions concerning proportionality and active case management give that purpose practical expression.[8]

The harder question is how consistently that purpose governs the architecture of proceedings. A collection of individually defensible steps may produce an indefensible cumulative burden. Proportionality requires us to examine the proceeding as a whole, including the parties' ability to sustain it.

There is also a responsibility to those awaiting the court's attention. Judicial time devoted to unnecessary procedural work is time unavailable for other disputes. The assessment of a step's value must therefore recognise both the parties before the court and the wider community dependent upon its finite resources.

These considerations raise an important question: could a lower-cost judicial model provide effective access to justice for certain disputes? Some expenditure is necessary to secure a fair

[8] *Civil Procedure Act 2010* (Vic) ss 7-9, 24, 47-9, 55, 65A-65C, 65G-65O.

and reliable determination. But costs may reach a point at which pursuing a remedy becomes impractical, or the expense outweighs its benefit. From a court's perspective, the challenge is to understand procedural fairness, and whether it can be achieved at a cost that more people can afford.

The complexity of a dispute is an obvious consideration. Some cases require substantial judicial and professional resources because of difficult legal questions, contested evidence or serious consequences. Others may be capable of fair determination through a less demanding process. We should also ask how much complexity arises from the dispute itself and how much arises from the way it is conducted. What appears straightforward to an experienced lawyer may be difficult for someone unfamiliar with the law. Assessing complexity therefore requires attention to both the case and the people involved.

The value of the damages sought is relevant, but cannot be decisive. Where legal costs approach or exceed the amount a person might recover, the practical value of the remedy is called into question. Yet a relatively small claim may be profoundly important to someone with limited resources, or raise issues that affect others. Proportionality requires consideration of the financial value, personal significance and wider consequences of a dispute. Courts must also consider the demands that individual proceedings place on resources needed to resolve other cases.

Predictability of outcome may also inform the inquiry. Where the law is settled and the likely outcomes fall within a relatively narrow range, it is reasonable to ask what further procedural expenditure contributes. Greater uncertainty may justify closer examination. But an apparently predictable case must still be open to meaningful challenge. A party must have a fair

opportunity to explain why their circumstances differ or why an accepted position should be reconsidered. An expectation about the result cannot replace the process of reaching it fairly. Technology should be assessed by whether it makes that process more accessible and effective. It may reduce expense, delay and inconvenience. It may also transfer work from the court to people who lack the skills or resources to undertake it. The relevant questions are therefore practical: whose costs are reduced, who may face new difficulties, and whether the quality of participation and decision-making is preserved.

Public investment is equally important. Reducing the cost borne by litigants may require greater expenditure by courts. That is a legitimate possibility to consider, given the public purposes courts serve. Their work enables people to enforce rights, rely on legal obligations and resolve disputes through lawful means. Decisions about funding therefore involve a judgment about how the cost of maintaining those protections should be shared. The cost to the public must be weighed alongside the consequences of leaving people unable to obtain a remedy.

Concluding remarks

These questions and considerations provide principles against which a proposed model can be assessed. Research can help courts understand where expenditure improves the quality of justice, where it prevents participation, and whether a change produces the intended benefits. The aim should be to reduce burdens that cannot be justified while preserving the care, fairness and participation that a just determination requires.

Research could follow people across the process, from initial contact to the implementation of orders, and seek the experiences of those who withdraw or cannot complete it. Engagement

with First Nations community-controlled organisations, disability advocates and legal assistance services can help reach people whose perspectives are otherwise missed.

Evaluation can be designed when a reform is conceived. We should specify the problem, explain how the proposed change is expected to address it, and identify the evidence that would justify continuation or revision. Relevant measures include total expenditure and time, comprehension, opportunities to respond, and the effectiveness of procedural steps.

Disaggregating those findings is essential. A reduction in average cost may conceal an increased burden on people with particular support needs. Equally, low appeal rates cannot establish legal correctness where the means to challenge decisions are themselves unequally distributed. Satisfaction is relevant to experience, but cannot resolve the question of whether a decision was legally sound.

Appropriate comparisons can strengthen evaluation, with care taken to account for differences between cases. Research must respect confidentiality, judicial independence and ethical requirements. Population findings may inform institutional arrangements; their use as factual propositions in an individual proceeding raises distinct questions of evidence and procedural fairness.

Finally, findings need a route into institutional decision-making. Responsibility for considering them should be assigned, connected to decisions about rules and resources, and followed by an account of the response. Courts should be prepared to revise a reform when the evidence challenges its assumptions.

Justice Gordon describes inviting confidential practitioner feedback after significant trials and changing arrangements for expert evidence in response.[9] This is an institutional disposition worth cultivating: willingness to examine the exercise of familiar responsibilities through the experience of others.

There are limits to what empirical inquiry can decide. Research cannot determine the content of a right or establish, by statistical preference, the safeguards a fair hearing requires. Those remain questions of law and judgment. It can make the consequences of institutional choices more visible, and the reasons for retaining or changing them more accountable.

The conference theme therefore asks something substantial of courts. Bridging research and person-centred justice requires us to bring evidence about people's actual circumstances into the design of the procedures through which legal rights acquire practical effect.

An institution committed to justice must examine the exclusion its own arrangements may produce, perhaps even as carefully as it examines the fairness of the cases before it. The merits of a lower-cost model lie in its capacity to preserve sound adjudication while making meaningful participation possible for more people.

My broader conclusion is that legal capability should be understood in relation to institutional demands. A process requiring extensive procedural knowledge creates a different threshold of participation from one that explains its requirements and provides appropriate assistance. We should be cautious about locating the entire problem in what individuals lack when part of the difficulty may lie in what institutions require.

[9] Gordon, 'The Responsive Bench' (n 1) 5–6 [18]–[20].

Thank you.