



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: EEas:1790885

15 November 2019

Mr Jonathan Smithers
Chief Executive Officer
Law Council of Australia
DX 5719 Canberra

By email: john.farrell@lawcouncil.asn.au

Dear Mr Smithers,

2020-2021 Pre-Budget Submission

Thank you for the opportunity to provide input for the Law Council's 2020-2021 Pre-Budget Submission to Treasury.

The Law Society's policy committees have considered your memorandum on this issue and make the following recommendations.

1. Funding for Federal Courts and Tribunals

1.1. Family Court and the Federal Circuit Court

The Law Society commends the Australian Government for commencing the process of considering and implementing the recommendations arising from the Australian Law Reform Commission ("ALRC") Review of the Family Law System.

We also commend the Government's current focus on the ability of the Courts to provide the community with accessible services for the resolution of family disputes. We understand the need to give careful consideration to the ALRC recommendations in light of supporting evidence. Further, we note the Government has appointed a Joint Select Committee on Australia's Family Law System, which will report on 7 October 2020.

However, there is an urgent need to increase resourcing of the Family Court and the Federal Circuit Court. The Law Council of Australia has called for an immediate increase in funding for this purpose. The Law Society supports this call in the strongest terms.

We remain deeply concerned about the significant delays experienced in the Family Court and Federal Circuit Court and the need for urgent measures to ease the burden on Judges, court staff and litigants. For example, in 2018-2019, 38% of cases pending conclusion in the Family Court were more than 12 months old, exceeding the court's target of 25%.¹ We understand that at the Sydney Registry of the Federal Circuit Court the callover lists of most Judges are already full to mid-2020.

¹ Family Court of Australia, *Annual Report 2018-19* (Commonwealth of Australia, 2019), 16.

Additionally, delays in appointing Judges to positions that become vacant in the Family Court and Federal Circuit Court have an ongoing impact on the operation of those courts. A delay of even as little as two months can have a significant impact, particularly in registries that already face substantial delays.

1.2. Administrative Appeals Tribunal

The 2018-19 Annual Report of the Administrative Appeals Tribunal stated that in the year under review, 66% of applications were finalised with 12 months of lodgement, below the target of 75%. The comparable figures in 2017-18 and 2016-17 were 77% and 82%.² The 2018-19 Annual Report further stated that “timeliness declined in the Migration and Refugee Division due to the workload pressures and caseload management strategies targeting older cases”.³

As the Law Council’s *Justice Project Final Report* noted, delays in commencing and finalising matters in a court or tribunal are a critical indicator of under-resourcing.⁴ We recommend that, to promote access to justice, the Australian Government make targeted resources available to the Administrative Appeals Tribunal to enable it to meet its performance measures and efficiently deal with the increase in workload.

2. Funding for the Australian Competition and Consumer Commission

The current level of funding for the Australian Competition and Consumer Commission should be increased, in our view, to enable this regulator to more effectively carry out its current investigative and regulatory functions, particularly in relation to consumer law-related investigations, support and dispute resolution.

3. Funding for the Australian Financial Security Authority

The Law Society is of the view that the current level of funding for the Australian Financial Security Authority should be increased to allow it to better regulate personal insolvency practitioners and investigate alleged offences under the *Bankruptcy Act 1966* (Cth) and *Personal Property Securities Act 2009* (Cth) and where appropriate refer for prosecution.

4. Adequate funding for Aboriginal and Torres Strait Islander legal services to address family law and care and protection legal need; and a review of the funding strategy for service delivery to Indigenous communities

The Law Society would like to reiterate its comments on these issues from our **enclosed** 17 January 2019 submission to the Law Council.

In addition, we note that the Commonwealth announcement of a new Legal Assistance Package, which included the creation of a new, single national mechanism for Commonwealth legal assistance funding, is of great concern to the impacted legal service providers in NSW, particularly with respect to the security of future funding for Aboriginal legal services.

² Administrative Appeals Tribunal, *Annual Report 2018-19* (October 2019), 21.

³ Administrative Appeals Tribunal, *2018-19 At a glance* (October 2019), 3.

⁴ Law Council of Australia, *Justice Project: Final Report - Courts and Tribunals* (August 2018) 4.

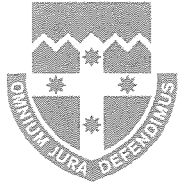
If you have any queries about the above, or would like further information, please contact Mark Johnstone, Director, Policy and Practice,

Yours sincerely,

A handwritten signature in blue ink, appearing to read "Elizabeth Espinosa".

Elizabeth Espinosa
President

Enc.



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: EEas:1631638

17 January 2019

Mr Jonathan Smithers
Chief Executive Officer
Law Council of Australia
DX 5719 Canberra

By email: nathan.macdonald@lawcouncil.asn.au

Dear Mr Smithers,

2019-2020 Pre-Budget Submission

Thank you for the opportunity to provide input for the Law Council's 2019-2020 Pre-Budget Submission to the Treasury ("pre-budget submission").

The Law Society's policy committees have considered your memorandum on this issue and make the following recommendations. We also take the opportunity to reiterate our recommendations for the Law Council's 2019 Federal Election Policy Platform, particularly those with budgetary impact (**attached**).

1. Funding for Data61's Regulation as a Platform

The Law Society seeks a funding commitment to foster digital innovation, particularly in the field of easing the burden of regulatory compliance. We consider that the funding of Data61's 'Regulation as a Platform' should be extended and increased as necessary, to assist with the digitisation of legislation. Regulation as a Platform allows users to leverage the regulatory infrastructure to develop tools and services to help reduce the compliance burden. Data61 has also undertaken important work in developing compliance solutions that would assist small businesses to identify their compliance obligations in a more cost-effective manner. We support the prioritisation of funding of this service as an access to justice and red tape reduction exercise.

2. Funding for the Australian Securities and Investments Commission and the Australian Prudential Regulation Authority

The Law Society considers that the current level of funding for the Australian Securities and Investments Commission and the Australian Prudential Regulation Authority should be increased. This will enable these bodies to more effectively carry out their respective investigative, regulatory and supervisory functions, as the case may be, and to assist each body to build its capacity to implement any recommendations adopted by the Government from the Final Report from the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services.

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3. Funding for the Australian Competition and Consumer Commission

The current level of funding for the Australian Competition and Consumer Commission should be increased, in our view, to enable this regulator to more effectively carry out its current investigative and regulatory functions, particularly in relation to consumer law-related investigations, support and dispute resolution.

4. Appropriate funding of the process of dealing with Constitutional recognition of Aboriginal and Torres Strait Islander Peoples and truth-telling

The Law Society notes the recommendations made by the Joint Select Committee on Constitutional Recognition Relating to Aboriginal and Torres Strait Islander Peoples in its 2018 final report. For the purposes of pre-budget submissions, we note in particular recommendations 1 and 3.

Respectively, these recommendations state that the Government engage in a process of co-design with Aboriginal and Torres Strait Islander peoples for a Voice to Parliament, and that the Government support the process of truth-telling. This could include the involvement of local organisations and communities, libraries, historical societies and Aboriginal and Torres Strait Islander associations.

In our view, the 2019-2020 Budget should make provisions for adequate funding of the co-design process (as well as the larger Constitutional reform process), and for the nationwide truth-telling project.

5. Specific funding for Indigenous lists in courts and tribunals

Recommendation 10-2¹ of the Australian Law Reform Commission's *Pathways to Justice* report is that specialist Aboriginal and Torres Strait Islander sentencing courts should be established, which incorporate individualised case management, wraparound services and be culturally competent, safe and appropriate. Recommendation 10-3 is that relevant Indigenous organisations should play a central role in the design, implementation and evaluation of specialist Indigenous sentencing courts.²

The Law Society strongly supports these recommendations, and we consider that although these recommendations reference states and territories, the Commonwealth has Indigenous affairs responsibilities which should translate to, among other things, the provision of funding for specialist Indigenous lists in courts and tribunals.

In the family law jurisdiction, the Law Society has written to, among others, the Commonwealth Attorney-General to support resourcing the expansion of the Federal Circuit Court of Australia's Indigenous list to registries across Australia. The pilot at the Sydney registry has resulted in very good outcomes for Indigenous families and children in keeping children safe within their own families and kin. In our view, funding to adequately resource the expansion of this list in the Federal Circuit Court of Australia should be included in the 2019-2020 budget.

¹ ALRC, *Pathways to Justice – An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples Final Report*, Report 133, December 2017, 328.

² *Ibid.*

6. Adequate funding for Aboriginal and Torres Strait Islander legal services to address family law and care and protection legal need

The Productivity Commission's review of Access to Justice Arrangements in 2014 found that some separation of funding for civil and criminal matters is required.³ The Productivity Commission noted that access to legal aid grants for civil matters is highly restricted and governments should separately determine and manage funding for civil legal assistance services. Such funds should not be diverted to criminal legal assistance, though equally they should not be made available at the *expense* of criminal law assistance. The main benefit of such a change is that a specific funding allocation for civil matters will mean the demand for civil legal services is matched by a more appropriate level of service provision.

We note in particular recommendation 21.2:

The Australian, State and Territory Governments should use the National Partnership Agreement on Legal Assistance Services to make eligibility principles for grants of legal aid for civil (including family) law cases consistent. The financial limits for grants of legal aid for civil (including family) law matters provided by legal aid commissions should be increased, linked to a measure of disadvantage and indexed over time. These limits should be consistent with the priorities and funding identified in recommendation 21.7.⁴

We also note recommendation 21.4

To address the more pressing gaps in services, the Australian, State and Territory Governments should provide additional funding for civil legal assistance services in order to:

- better align the means test used by legal aid commissions with that of other measures of disadvantage
- maintain existing frontline services that have a demonstrated benefit to the community
- allow legal assistance providers to offer a greater number of services in areas of law that have not previously attracted government funding.

The Commission estimates the total annual cost of these measures to the Australian, State and Territory Governments will be around \$200 million. Where funding is directed to civil legal assistance it should not be diverted to criminal legal assistance.⁵

The Law Society continues to support the implementation of these recommendations. We note that given that these recommendations were made in 2014, the estimated total annual cost of the measures of \$200 million is likely to require reassessment. In particular, we support the allocation of adequate funding for Aboriginal and Torres Strait Islander legal services to provide legal assistance and field officers to address family law and care and protection legal need in Indigenous communities.

7. Review funding strategy for service delivery to Indigenous communities

In the Law Society's view, the Indigenous Advancement Strategy should be reconsidered in light of a number of reports, including the Australian National Audit Office's report discussed below, as well as the report of the Senate Finance and Public Administration References Committee on its inquiry into the Commonwealth Indigenous Advancement Strategy tendering processes.

³ Productivity Commission, *Access to Justice Arrangements Inquiry Report*, No. 72, 5 September 2014, 39.

⁴ *Ibid.*, 63.

⁵ *Ibid.*

One measure of a government's commitment to community empowerment is assessing how the service delivery to Aboriginal communities is designed and funded. In our view, funding of service delivery to Aboriginal communities should prioritise partnerships with local Aboriginal leadership, and should prioritise funding of Aboriginal controlled community organisations that may be already providing local solutions to local issues. The Law Society expressed serious concerns in respect of the Indigenous Advancement Strategy ("IAS") in 2015, and continue to be concerned about its impact on Indigenous empowerment and effectiveness of programs delivered.

We continue to hold the view that it may be a false economy to shift the funding model from high quality community service provision targeted towards Indigenous peoples, to a generalist model that prioritises cost efficiency rather than culturally based expertise. We understand that the outcome of the IAS has generally been to disadvantage smaller or medium sized Aboriginal-controlled organisations. We note the report in *The Australian* that two thirds of the organisations that received funding under the IAS in 2015 are non-Indigenous organisations.⁶ The funded recipients include the Northern Territory Government, various Government Departments including the Departments of Health and Ageing; Education and Training; Sport and Recreation; Justice and Attorney-General, and the Department for Correctional Services.⁷ The Law Society understands that Shire Councils were among the list of successful organisations, as well as universities, and other already well-funded non-government organisations such as the Australian Rugby Union.⁸

We remain concerned that this outcome undermines community-based management structures, and is inconsistent with community empowerment and the human rights principles of self-determination.⁹

We note again the findings of the NSW Ombudsman on the issue of effective funding models for Aboriginal organisations in the Ombudsman's Special Report to Parliament, *Addressing Aboriginal disadvantage: the need to do things differently*¹⁰ ("the Report"). The Report's findings were informed by extensive consultation with thousands of Aboriginal people, as well as hundreds of agencies and organisations responsible for service provision. The Report is also supported by a decade of work by the Ombudsman on these issues.¹¹

We recommend consideration of the findings and recommendations of the Report, which in the Law Society's view, supports a transparent funding model that is underpinned by the principle of self-determination, and which establishes true partnerships. The Report noted that in NSW "substantial government investments have "yielded dimly poor returns to date"..."¹² and that in order to change this, the reform process must make Aboriginal affairs core business for all agencies, where change is driven from the centre of government. Further, the reform process must involve a true partnership between government and Aboriginal leaders. The Report also noted that:

⁶ Natasha Robinson, "Indigenous Advancement Strategy funding revealed," 24 March 2015, *The Australian*, available online: <http://www.theaustralian.com.au/national-affairs/indigenous/indigenous-advancement-strategy-funding-revealed/story-fn9hm1pm-1227277037488> (accessed 14 April 2015).

⁷ The list of organisations recommended for funding under the IAS grant funding round is available at the Department of Prime Minister and Cabinet website: https://www.pmc.gov.au/sites/default/files/publications/ias_grant_funding_recommended_orgs.pdf.

⁸ *Ibid.*

⁹ Articles 3 and 4, *Declaration on the Rights of Indigenous Peoples* and Article 1, *International Covenant on Civil and Political Rights*.

¹⁰ NSW Ombudsman, *Addressing Aboriginal disadvantage: the need to do things differently*, A Special Report to Parliament under s 31 of the Ombudsman Act 1974, October 2011, available online: https://www.ombo.nsw.gov.au/data/assets/pdf_file/0012/3342/SR_Aboriginal-disadvantage-report.pdf

¹¹ *Ibid.*, at 2.

¹² *Ibid.*, at 5.

government must work with Aboriginal leaders in developing strategies to facilitate greater participation by Aboriginal people in successful economic endeavours.¹³

The Law Society's view is that while the Report examines the NSW Government's Aboriginal affairs strategy, its findings and recommendations are likely to be applicable nationally.

Further, since the Law Society's submissions on the IAS, the Australian National Audit Office (ANAO) has assessed "whether the Department of the Prime Minister and Cabinet has effectively established and implemented the Indigenous Advancement Strategy to achieve the outcomes desired by government."¹⁴ The ANAO reached the conclusion that, for a number of reasons, the IAS does not achieve the outcomes desired by government. In particular, the ANAO's report noted:

The department's grants administration processes fell short of the standard required to effectively manage a billion dollars of Commonwealth resources. The basis by which projects were recommended to the Minister was not clear and, as a result, limited assurance is available that the projects funded support the department's desired outcomes. Further, the department did not:

- assess applications in a manner that was consistent with the guidelines and the department's public statements;
- meet some of its obligations under the Commonwealth Grants Rules and Guidelines;
- keep records of key decisions; or
- establish performance targets for all funded projects.¹⁵

It appears that the Government has accepted the ANAO's recommendations.

In response to the Royal Commission into the Protection and Detention of Children in the Northern Territory, the Government acknowledged that the issue is not a lack of funding, rather, it is the lack of coordination and understanding of how that money is spent and what outcomes are being achieved.¹⁶ The Government acknowledged also that this issue is relevant not just to the NT but to the Commonwealth. In its response, the Government stated that "We have committed \$53 million to implement a whole-of-government research and evaluation strategy for policies and programs affecting Indigenous Australians, including the IAS."¹⁷

Given the above, we suggest that the IAS be reconsidered, and that it explicitly adopt an approach that empowers Indigenous communities, and is consistent with the principles of self-determination. Such an approach would include the recognition of Aboriginal community strengths by requiring consultation and partnership with Indigenous communities to design and deliver local solutions to local problems, and to require the prioritising the funding of service delivery by organisations with local and culturally sound expertise in the assessment of funding applications.

¹³ Ibid.

¹⁴ Australian National Audit Office, *Indigenous Advancement Strategy Performance Audit Report*, 3 February 2017, available online: <https://www.anao.gov.au/work/performance-audit/indigenous-advancement-strategy>

¹⁵ Ibid.

¹⁶ Joint media release of the Prime Minister, Minister for Social Services and Minister for Indigenous Affairs, "Commonwealth Government response to the Royal Commission into the Protection and Detention of Children in the Northern Territory", 8 February 2018, available online: <https://us7.campaign-archive.com/?e=c73e365cec&u=07a26784b130ffd1109d7eef5&id=846660b64e>

¹⁷ Ibid.

8. Review funding strategy to assist with capacity building in the Indigenous service sector

We further suggest that funding must be sufficient to build capacity in Indigenous organisations and the sector more generally to meet the increased demand on the sector and service(s). The 2019-2020 Budget must provide for up-front investment to support capacity building in the Indigenous service sector to meet growing need.

As noted above, the Law Society is strongly of the view that true partnerships with Indigenous organisations are critical to successful service delivery to Indigenous people. However, unless this approach is matched by adequate government investment in Indigenous service sector capacity building, Indigenous organisations will be set up to fail, and Indigenous organisations will be pushed out of the market by more mature and larger scale non-Indigenous service providers.

In the NSW example, increased outsourcing of public services is resulting in growing demand on the Aboriginal service sector. Since the NSW Department of Family and Community Services (FACS) undertook its Safe Home for Life reform in 2014, NSW has seen large scale outsourcing of child protection services to the NGO sector. This has significantly increased demand on the Aboriginal service sector. FACS' new commissioning model (i.e. outsourcing) is only going to place greater demand on an already stretched and under-funded Indigenous service sector.

However, there has not been an equivalent investment from State, Territory and Commonwealth Governments in building the capacity of the Indigenous service provision sector to meet the increased need.

9. Commonwealth resourcing of justice reinvestment initiatives

The Law Society considers that the Commonwealth should resource community-led justice reinvestment initiatives as part of the effort to address the unacceptable rates of Indigenous incarceration.

The ALRC's *Pathways to Justice* report made recommendations that Commonwealth, state and territory governments should provide support for the establishment of an independent justice reinvestment body (recommendation 4-1)¹⁸ and that Commonwealth, state and territory governments should support justice reinvestment trials initiated in partnership with Aboriginal and Torres Strait Islander communities (recommendation 4-2).¹⁹ We understand that the prevailing view among justice reinvestment practitioners, including the Justice Reinvestment Network Australia²⁰ is that funding for community-led sites should be prioritised over funding for peak bodies.

The Law Society has consistently advocated in support of the justice reinvestment approach, and specifically in respect of the Maranguka Justice Reinvestment project, with Just Reinvest NSW, at Bourke NSW. KMPG performed an impact assessment report of the project, which demonstrated significant quantitative and qualitative justice-related

¹⁸ ALRC, *Pathways to Justice – An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples Final Report*, Report 133, December 2017, 137.

¹⁹ *Ibid.*, at 138.

²⁰ The Justice Reinvestment Network Australia (JRNA) is a group of research and policy colleagues from around Australia working with and advocating for Justice Reinvestment, particularly for Aboriginal and Torres Strait Islander people. JRNA was established in 2015 to share knowledge and create a community of practice around justice reinvestment to strengthen the evidence base, provide peer professional support and advice, and promote justice reinvestment in Australia.

improvements for the Indigenous community in Bourke as a result of the Maranguka Justice Reinvestment project.

The Law Society wrote to the NSW Government, recommending that it:

- Provide support for the Maranguka Justice Reinvestment Project in Bourke
- Provide support for the roll out of the justice reinvestment model in other Indigenous communities
- Provide support for an independent Justice Reinvestment body to provide technical and strategic assistance to those sites
- Redirect the savings into the delivery of effective services that continue to build on the strengths of the community, in partnership with the local Aboriginal leadership and community.

10. Increased funding for the Australian Human Rights Commission

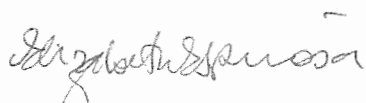
The Australian Human Rights Commission (AHRC) remains significantly under-resourced, with complaints regularly taking over six months to reach conciliation stage. The Commonwealth Government should adequately resource the AHRC so it can effectively carry out its investigation, complaint and conciliation functions.

11. Funding for the Office of the Australian Information Commissioner

The current level of funding for the Office of the Australian Information Commissioner should be increased to enable this office to effectively carry out its investigative, regulatory, dispute resolution and public education functions, and uphold the rights and protections afforded by the *Freedom of Information Act 1982* (Cth) and the *Privacy Act 1988* (Cth). We note that the Law Council included a recommendation to this effect in its 2018-19 Pre-Budget Submission.

If you have any queries about the above, or would like further information, please contact Mark Johnstone, Director, Policy and Practice, on (02) 9926 0256 or by email at mark.johnstone@lawsociety.com.au.

Yours sincerely,



Elizabeth Espinosa
President

Enc.



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: HRC/DHAs: 1590460

2 November 2018

Mr Jonathan Smithers
Chief Executive Officer
Law Council of Australia
DX 5719 Canberra

By email: natasha.molt@lawcouncil.asn.au

Dear Mr Smithers,

Federal Election Policy Platform – key policy issues

Thank you for the opportunity to suggest policy issues for inclusion in the Law Council of Australia's forthcoming Federal Election Policy Platform. The Law Society has consulted with its policy committees, and would like to recommend the following issues.

- **Implementing recommendations from the *Pathways to Justice* report**

Issue: The criminal justice system in Australia continues to take a vastly disproportionate toll on Indigenous Australians. Aboriginal and Torres Strait Islander men are 14.7 times more likely to be imprisoned than non-Indigenous men; while Aboriginal and Torres Strait Islander women are 21.2 times more likely to be imprisoned than non-Indigenous women.

Recommendations:

- All parties should commit to implementing recommendations from the 2018 Australian Law Reform Commission *Pathways to Justice* report that address the over-representation of Aboriginal and Torres Strait Islander Australians in the criminal justice system.

- **Constitutional reform process**

Issue: The Law Society notes that the substance of, and process for, constitutional recognition of Aboriginal and Torres Strait Islander people continue to be unresolved. There are other live issues for constitutional reform, including questions in relation to s 44 of the *Commonwealth of Australia Constitution Act 1900*, and the issue of a republic.

The issue of constitutional reform will remain contentious over the next parliamentary term, and given Australia's referendum record, the Law Society considers that there are questions in respect of whether a permanent constitutional reform process is required. These questions will include:

- how to separate the issue of constitutional review from political processes;
- reforming the machinery for staging referenda, including in respect of established procedures for constitutional debate;

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- establishing procedures and sources for funding constitutional reform processes; and
- consideration of the question of public education about referendum proposals.

Recommendation: All parties should commit to referring for inquiry the issue of whether a permanent constitutional reform process should be established, and what such a reform process might look like.

- **Proposed merger of the Family Court of Australia and the Federal Circuit Court of Australia**

Issue: The current Government has introduced a Bill to merge the Family Court of Australia and the Federal Circuit Court of Australia, creating the Federal Circuit and Family Court of Australia, or FCFCA.

The Law Society has expressed concerns in relation to the Bill, including in respect of the report by PwC report that informed proposals to merge the courts. These include in principle concerns about the bureaucratisation of the judicial making process at the expense of justice. We note that the PwC report does not consider the quality of justice that would be delivered, rather the projected efficiency the merger would deliver.

The Law Society has previously stated its support for a single court dedicated to family law issues, and we continue to hold that view. However the creation of a single court is only part of the solution. Proper resourcing is also required, which should include the appointment of judicial officers with the requisite training and experience to deal with family law, in sufficient numbers to keep pace with the complexity and quantity of matters being heard. The Government should also await the final recommendations of the Australian Law Reform Commission's review of the family law system.

Recommendation: All parties should confirm their commitment to a properly resourced, accessible and responsive family law system in Australia.

- **The right to representation before the Fair Work Commission ("FWC") and other tribunals in Australia**

Issue: Under s 596 of the *Fair Work Act 2009* (Cth) parties must seek leave from the FWC to be represented by a lawyer or paid agent. This can result in delays in pre-trial procedures, increased time spent at hearing discussing irrelevant matters, a greater number of adjournments, difficulties in advancing settlement discussions, and increased cost for parties. We understand this is an issue the Law Council has raised at the federal level previously, and we would support it being included in the next Federal Election Policy Platform.

Recommendations:

- All parties should commit to repealing or amending section 596 of the *Fair Work Act 2009* (Cth) so that those who come before the FWC have an automatic right to be represented by a lawyer or paid agent.
- Legislation that obliges parties appearing before any other tribunal in Australia to seek leave to be represented by a lawyer or paid agent should be similarly amended.

- **Improving access to justice for rural, regional and remote ("RRR") communities**

Issue: Members of our Rural Issues Committee have echoed concerns contained in *The Justice Project: Final Report* regarding the intersecting financial, logistical and

infrastructure barriers constraining Australians in RRR communities from accessing justice.

Recommendation: All parties should commit to improving the delivery of legal services to RRR areas through long-term funding solutions and use of new technologies where appropriate.

- **Reform of the superannuation law relating to members nominating beneficiaries of their death benefit**

Issue: As the case of *Re Narumon Pty Ltd* [2018] QSC 185 illustrated, there is scope under the *Superannuation Industry (Supervision) Act 1993* (Cth), and *Superannuation Industry (Supervision) Regulations 1994* (Cth), for confusion regarding the definition of dependents, financial dependents and legal personal representatives. This is particularly salient when it is realised that a person is only eligible to receive a death benefit if he or she is a dependant according to the definition in the trust deed at the date of the member's death, and sometimes even a later date.

Recommendation: All parties should commit to providing clarity in relation to this issue, and developing legislative amendments if required.

- **National Electronic Conveyancing system**

Issue: Without changes to the current regulatory framework for National Electronic Conveyancing, practitioners may need to subscribe to multiple Electronic Lodgement Network Operators, which has the potential to derail the day to day operation of electronic conveyancing and create an unworkable system for practitioners, financial institutions and consumers.

Recommendation: All parties should commit to implementing a national regulatory framework to ensure that Electronic Lodgement Network Operators function together seamlessly.

- **Exclusion of prisoners from Medicare and the pharmaceutical benefits scheme ("PBS")**

Issue: Section 19(2) of the *Health Insurance Act 1973* (Cth) disallows the payment of benefits under Medicare and the Pharmaceutical Benefits Scheme ("PBS") for services rendered by, or on behalf of a state or territory government authority. This provision, which purportedly exists to prevent a service from being funded twice, has the effect of excluding prisoners and young people in detention from Medicare and PBS subsidies. There are several Medicare-funded services that inmates in Australia would stand to benefit from, including the Mental Health Care Plan and the Indigenous Health Check.¹ While prison health services are funded by State governments, the Federal Health Minister has the discretionary power under s 19(2) of the *Health Insurance Act 1972* (Cth) to direct that Medicare benefits are payable where professional services are rendered by a State.

¹ A 2015 study by Tessa Plueckhahn et al estimated that delivering an Indigenous-specific health assessment to each Indigenous prisoner in Australia per year would cost less than 0.01% of the annual \$20 billion Medicare budget. See Tessa Plueckhahn et al, 'Are some more equal than others? Challenging the basis for prisoners' exclusion from Medicare' (2015), *The Medical Journal of Australia*, 203 (9), 359-361.

Recommendation: All parties should commit to ensuring that detainees in each state and territory in Australia receive the same level of health care the general public would receive under the public health system.

- **Mental health and the criminal justice system**

Issue: The mental health services available to inmates in Australia are insufficient given the scale of the need arising from demographic and environmental factors. A 2015 study conducted by NSW Justice Health and Forensic Mental Health found nearly 63% of the adult population in correctional centres in NSW had received a mental health diagnosis, most commonly depression and anxiety. Yet people in the criminal justice system are excluded from mental health support under Medicare and the National Disability Insurance Scheme ("NDIS").

Recommendation: All parties should commit to reviewing how the mental health system – and particularly the NDIS – can be improved with regard to support for participants in the criminal justice system in Australia.

- **Updating our privacy laws to respond to new technologies**

Issue: The Law Society is of the view that laws protecting individuals against breach of privacy have not kept pace with technological developments, and should be reviewed and reformed. New technologies, such as those that enable corporations and governments to build up detailed profiles of individuals based on their personal data and browsing history, present an unprecedented scope for serious invasions of privacy.

We also note that there is currently no comprehensive national framework for consistent regulation and protection of health information across public and private sectors. Instead, there are overlapping and fragmented federal, state and territory laws which differ depending on who holds health information. Where it leads to greater security of information, the Law Society strongly believes this complex framework should be consolidated and simplified. The Law Society also supports the harmonisation of all federal, state and territory privacy laws, which we consider to be particularly important given the increasing complexity and public awareness in this area.

Recommendations:

- All parties should commit to introducing a new Commonwealth Act to enact a statutory cause of action for serious invasion of privacy, covering intrusion upon seclusion; and misuse of private information.
 - In addition, all parties should commit to:
 - increasing funding for the Office of the Australian Information Commissioner;
 - promoting open government;
 - harmonising health privacy laws;
 - harmonise federal and state/territory privacy laws.
- **Reiterating recommendations from 2016 Federal Election Policy Platform**

In addition to the issues raised above, the Law Society is of the view that the following recommendations from the Law Council's 2016 Federal Election Policy Platform remain valid, and should be included in the platform for the upcoming federal election.

- The Federal Government should support and facilitate other states and territories to join the legal services common market and uniform regulatory framework established by NSW and Victoria so that Australia has a single legal services

market and a single approach to regulating the legal profession and the provision of legal services to the Australian community.

- The Federal Government should commit to consultation with the Law Council and its constituent Bodies prior to any decision to extend the Anti-Money Laundering regime to legal practitioners.

If you have any queries about the items above, or would like further information, please contact Mark Johnstone, Director, Policy and Practice, on (02) 9926 0256 or mark.johnstone@lawsociety.com.au.

Yours sincerely,

A handwritten signature in cursive script that reads "Doug Humphreys".

Doug Humphreys OAM
President