



Law Council
OF AUSTRALIA

2024–25 Pre-Budget Submission

The Treasury

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Table of Contents

About the Law Council of Australia	3
Acknowledgements	4
Executive summary	5
Recommendations	5
Legal assistance sector	9
Private legal practitioners undertaking legal aid work	11
Increased legal assistance funding for family law matters	12
Adequate legal assistance funding for First Nations legal services.....	14
Access to legal assistance in rural, regional and remote communities	16
Funding of the federal courts and tribunals	18
Baseline funding of the federal courts	18
Federal Circuit and Family Courts	19
Litigation guardians	20
Administrative Review Tribunal	21
Fair Work Commission	22
Supporting the rule of law and administration of justice	23
Establishment of a Federal Judicial Commission.....	23
Establishment of a Federal Parole Authority	24
Establishment of a Whistleblower Protection Authority	25
Agency resourcing	26
Australian Human Rights Commission	26
Anti-Slavery Commissioner	27
Implementation of the National Plan to End Violence against Women and Children 2022–2032	28
Protecting and supporting the rights of older Australians	29
The New Aged Care Act	29
Superannuation Death Benefit Framework.....	30
Protecting the rights of individuals in detention	31
Optional Protocol to the Convention Against Torture.....	31
Access to healthcare systems	32
Supporting access to legal information	34
Australasian Legal Information Institute (AustLII)	34
Developing and strengthening the legal profession in the Pacific region	35
Pacific Islands Legal Information Institute (PacLII)	35
Support for Independent Legal Professional Bodies in the South Pacific.....	36

About the Law Council of Australia

The Law Council of Australia represents the legal profession at the national level; speaks on behalf of its Constituent Bodies on federal, national, and international issues; promotes and defends the rule of law; and promotes the administration of justice, access to justice and general improvement of the law.

The Law Council advises governments, courts, and federal agencies on ways in which the law and the justice system can be improved for the benefit of the community. The Law Council also represents the Australian legal profession overseas, and maintains close relationships with legal professional bodies throughout the world. The Law Council was established in 1933, and represents its Constituent Bodies: 16 Australian State and Territory law societies and bar associations, and Law Firms Australia. The Law Council's Constituent Bodies are:

- Australian Capital Territory Bar Association
- Law Society of the Australian Capital Territory
- New South Wales Bar Association
- Law Society of New South Wales
- Northern Territory Bar Association
- Law Society Northern Territory
- Bar Association of Queensland
- Queensland Law Society
- South Australian Bar Association
- Law Society of South Australia
- Tasmanian Bar
- Law Society of Tasmania
- The Victorian Bar Incorporated
- Law Institute of Victoria
- Western Australian Bar Association
- Law Society of Western Australia
- Law Firms Australia

Through this representation, the Law Council acts on behalf of more than 90,000 Australian lawyers.

The Law Council is governed by a Board of 23 Directors: one from each of the Constituent Bodies, and six elected Executive members. The Directors meet quarterly to set objectives, policy, and priorities for the Law Council. Between Directors' meetings, responsibility for the policies and governance of the Law Council is exercised by the Executive members, led by the President who normally serves a one-year term. The Board of Directors elects the Executive members.

The members of the Law Council Executive for 2024 are:

- Mr Greg McIntyre SC, President
- Ms Juliana Warner, President-elect
- Ms Tania Wolff, Treasurer
- Ms Elizabeth Carroll, Executive Member
- Ms Elizabeth Shearer, Executive Member
- Mr Lachlan Molesworth, Executive Member

The Chief Executive Officer of the Law Council is Dr James Pople. The Secretariat serves the Law Council nationally and is based in Canberra.

The Law Council's website is www.lawcouncil.au.

Acknowledgements

The Law Council is grateful for the contributions of the following Law Council Constituent Bodies, Sections and Advisory Committees in the preparation of this submission:

- Law Institute of Victoria;
- Law Society of New South Wales;
- Law Society of Western Australia;
- Queensland Law Society;
- Family Law Section;
- Federal Dispute Resolution Section;
- Access to Justice Committee;
- National Criminal Law Committee;
- National Elder and Succession Law Committee;
- National Human Rights Committee; and
- Rural, Regional and Remote Committee.

Executive summary

1. The Law Council is grateful for the opportunity to provide this submission to the Treasury for consideration in preparing the 2024–25 Budget.
2. The Law Council's submission seeks to identify a number of important areas in which increased investment by the Australian Government, necessary to improve access to justice outcomes and to promote and uphold the rule of law, might be directed.
3. The Law Council acknowledges the current economic challenges faced both domestically and globally at the present time. However, it is in tough economic times that legal assistance services are most vital and should be prioritised. The preparation of the 2024–25 Budget coincides with the upcoming release of the Final Report of the Independent Review of the National Legal Assistance Partnership 2020–25 (**NLAP**). This provides a timely opportunity for the Australian Government to address the critical funding pressures facing legal assistance services and to ensure that they are able to meet increasing demands on the sector.
4. A focus of the Law Council's submission is investment in initiatives that can assist in improving outcomes for individuals experiencing disadvantage—including older Australians, women and children experiencing family violence and those in places of detention—and support a greater number of people in enforcing their rights.
5. In upholding the democratic values, rule of law and the administration of justice, in Australia and the Pacific region, it is vital that the Australian Government invest in the institutions that currently underpin, or could enhance, the achievement of those fundamental ideals. The Law Council's submission outlines the importance of additional funding in the federal courts and tribunals, and sets out a number of opportunities for investment in new agencies including a Federal Judicial Commission (**FJC**), a Federal Parole Authority and a Whistleblower Protection Authority (**WPA**).

Recommendations

6. Key recommendations of the Law Council include:
 - As submitted by the Law Council to the Independent Review of the NLAP, the Australian Government should provide a significant and ongoing increase in the funding of the legal assistance sector. This funding should include:
 - increased federal funding for Legal Aid Commissions (**LACs**) across criminal, civil and family law matters, restoring the Commonwealth share of funding to 50 per cent; and
 - additional, ongoing and evidence-based resourcing for Community Legal Centres (**CLCs**), Aboriginal and Torres Strait Islander Legal Services (**ATSILSs**) and (outside of the NLAP) Family Violence Prevention Legal Services (**FVPLSs**).
 - To the extent that the Report of the Independent Reviewer reflects the above recommendation, the Australian Government should consider the recommendations of the Review as a matter of priority and address any recommendations relating to baseline funding urgently through the 2024–25 Budget.

- In accordance with the recommendation of the *Justice on the Brink* report,¹ the Australian Government should provide an additional \$69 million per annum to Legal Aid Commissions to support increasing fees paid to private practitioners undertaking legal aid work by 18 per cent (in line with national wage growth since 2013).
- The Australian Government should provide additional funding to LACs to ensure that Independent Children’s Lawyers (**ICLs**) can perform the task for which they have been engaged, including meeting the additional requirements resulting from the implementation of the *Family Law Amendment Act 2023* (Cth).
- The Australian Government should extend the Mid-Year Economic and Fiscal Outlook 2023–24 (**MYEFO**) commitment of \$17.1 million in 2023–24 to support legal aid commissions to provide legal representation in family law proceedings through the forward estimates.
- The Australian Government should allocate adequate and sustainable resources for ATSILSs and FVPLSs to allow them to provide culturally safe and effective legal services and carry out the work intended as a part of the requirements of the National Agreement on Closing the Gap.
- The Australian Government should provide funding to facilitate the development of an Aboriginal and Torres Strait Islander Disability Framework and operational plan as recommended by National Aboriginal and Torres Strait Islander Legal Services.
- Consideration should be given to the establishment of a Higher Education Loan Program (**HELP**) debt relief scheme for legal practitioners who reside and work in eligible rural, regional and remote (**RRR**) areas, to incentivise the recruitment and retention of qualified lawyers in underserved areas.
- The Australian Government should increase the baseline resourcing of the federal courts including by:
 - appointing additional judges;
 - promptly filling vacancies;
 - providing increased resources for registries;
 - improving relevant technology and infrastructure; and
 - improving court services in rural, regional and remote areas.
- The Australian Government should:
 - provide funding to resource the Federal Circuit and Family Court of Australia (Division 1) and Federal Circuit and Family Court of Australia (Division 2) (the **Federal Circuit and Family Courts**) to administer the information sharing regime effectively and work with the states and territories to ensure protocols, training and resourcing are available to promptly respond to information sharing orders; and
 - allocate resources to expand the Federal Circuit and Family Courts’ translation project to encompass all major community languages.
- The Australian Government should establish and fund a scheme to facilitate the coordination of litigation guardians in federal courts and tribunals and

¹ Impact Economics and Policy, [Justice on the Brink: Stronger Legal Aid for a Better Legal System](#) (Report prepared for National Legal Aid, November 2023).

develop legislation to provide for the appointment of litigation guardians in federal courts with appropriate protection from liability.

- Alongside funding to establish and operate the new Administrative Review Tribunal, the Australian Government should provide additional and adequate funding for the related services that will support those who engage with the Tribunal, including legal representation/advice, interpreters and litigation guardians.
- The Australian Government should ensure that the Fair Work Commission (**FWC**) is adequately resourced to implement the workplace reform agenda, and to support dispute resolution through remote conferencing.
- The Australian Government should establish and adequately resource an FJC to deal with any allegation of lack of competency, serious misconduct or corruption in the federal courts. The FJC should also support the provision of education, training and support for judicial officers.
- The Australian Government should establish and adequately resource a Federal Parole Authority as an independent statutory body empowered to make parole decisions relating to individuals convicted of federal offences. The Federal Parole Authority should be supported by the establishment of an Office for the Management of Federal Offenders (**OMFO**).
- The Australian Government should establish and adequately resource a WPA.
- The Australian Government should ensure that the Australian Human Rights Commission (**AHRC**) is adequately resourced to effectively carry out its investigation, complaint and conciliation functions and its function of enhancing public education and human rights resources.
- The Australian Government should consider the establishment of a dedicated National Commissioner for Aboriginal and Torres Strait Islander Children.
- The Australian Government should consider increasing the funding allocation for the Australian Anti-Slavery Commissioner to provide for a reasonable number of support staff, taking into account the scale of the problem to be addressed across the country, and the resourcing experience of the New South Wales Commissioner.
- The Australian Government should ensure adequate funding is provided for appropriately targeted specialist legal assistance services, as well as for social and economic measures, including:
 - increased funding for community legal centres and specialist legal services to provide advice and representation in domestic and family violence matters;
 - community education programs to address the cultural norms of gender inequality at the foundation of violence against women and their children; and
 - integrated programs and services in respect of areas such as police services, school- and university-based services, crisis health and accommodation services, financial assistance services, and perpetrator behaviour change programs, as well as the expansion of integrated legal services for victim-survivors of sexual assault.

- The Australian Government should provide appropriate funding to support the implementation of the new Aged Care Act. In particular,
 - funding for properly resourced legal assistance services for complainants who have made or are escalating complaints to the new Aged Care Complaints Commissioner; and
 - funding to support and achieve consistency amongst state, territories and the Commonwealth concerning individual decision-making.
- The Australian Government should fund a review of the regulatory framework in relation to superannuation death benefit nominations.
- The Australian Government should contribute an appropriate share of funding to ensure the establishment of National Preventive Mechanisms (**NPMs**) in all domestic jurisdictions and full implementation of the Optional Protocol to the Convention Against Torture (**OPCAT**) in general.
- The Australian Government should provide increased and sustainable funding to the Office of the Commonwealth Ombudsman to perform its Commonwealth NPM and national coordination functions.
- The Australian Government should ensure, including through the provision of additional funding, that all individuals in custody in Australia are able to access Australia's healthcare services including the Medicare Benefits Scheme (**MBS**) and the Pharmaceutical Benefits Scheme (**PBS**).
- The Australian Government should provide substantial ongoing funding for the Australasian Legal Information Institute (**AustLII**) to support its provision of access to legal information at no cost.
- The Australian Government should approve the Pacific Islands Legal Information Institute's (**PacLII**'s) five-year funding application to ensure its continued operation.
- The Australian Government should provide funding to strengthen and support the activities and development of legal professional associations in the South Pacific, including by working in collaboration with existing initiatives of the Law Council of Australia and the South Pacific Lawyers' Association (**SPLA**).
- The Australian Government should provide funding for specialised training for legal practitioners in the South Pacific region to be delivered through the SPLA.

Legal assistance sector

7. Legal problems are a common occurrence in society, and most Australians will experience several interactions with the legal system throughout their lifetime. Effective and efficient access to justice in these circumstances will often necessitate the assistance of a legal adviser or representative, as many people struggle to navigate Australia's complex laws and justice system on their own.
8. People experiencing disadvantage are often more vulnerable to legal problems and frequently have greater and more complex legal needs than the general population. For many Australians experiencing disadvantage, the no-cost or minimal-cost services provided by publicly-funded legal assistance providers are often the first and most fundamental sources of support to address legal issues. Access to these services is especially important in the current economic circumstances, noting the preventative role that they play in individuals and families avoiding harm—for example in preventing job loss, loss of accommodation or family breakdown.
9. The higher cost of living being experienced by Australians has meant that people have to prioritise their spending. Access to essential legal services is often relegated behind accommodation, health, and other costs which have increased significantly. This is particularly problematic as only the very poorest Australians are likely to meet the income and assets tests for receiving a legal aid grant. Currently, only eight per cent of households would meet the means test, while approximately 13 per cent of Australians live below the poverty line.²
10. The baseline level of Australian Government funding for much of the legal assistance sector, including LACs, CLCs and ATSILSs, is currently set out in the NLAP.³ The NLAP is a national partnership agreement between the Australian Government and all states and territories, and is due to come to an end following the 2024–25 financial year.
11. The Government has engaged an Independent Reviewer to examine 'the extent to which the objective, outcomes and outputs of the NLAP have been achieved, and the NLAP is efficient, effective and appropriate in achieving its policy intent'.⁴ The Law Council provided a [submission](#) to the Reviewer in October 2023.⁵
12. The current funding model under the NLAP is not providing sufficient funding to ensure that Australia provides its people—through the legal assistance sector—with an adequate safety net in times of legal need. Law Council considers current Commonwealth funding under the NLAP to be approximately half of the level required to adequately meet demand on the sector.⁶ To ensure that the established objectives agreed under the NLAP can be progressed, a significant and ongoing increase in the funding of the entire legal assistance sector is required.

² Impact Economics and Policy, [Justice on the Brink: Stronger Legal Aid for a Better Legal System](#) (Report prepared for National Legal Aid, November 2023) 15.

³ The NLAP includes funding for includes baseline funding for services delivered by LACs, CLCs and ATSILSs. This funding is supplemented by funding under additional Australian Government initiatives. Additionally, Family Violence Prevention Legal Services receive funding under the National Indigenous Australians Agency portfolio.

⁴ [National Legal Assistance Partnership](#) (An agreement between the Commonwealth of Australia and the States and Territories, 4 June 2020).

⁵ Law Council of Australia, Submission to Dr Warren Mundy, Independent Reviewer, [Independent Review of the National Legal Assistance Partnership](#) (27 October 2023).

⁶ *Ibid* 13.

13. In the [Final Report of the Justice Project](#), released in August 2018, the Law Council estimated that the Commonwealth funding shortfall was at least \$310 million.⁷ This figure comprised:
 - (a) the Productivity Commission’s estimate that the Commonwealth should provide additional funding of around \$120 million per annum for civil legal assistance services;⁸ and
 - (b) PwC’s estimate in advice commissioned by the Law Council that, to return the Commonwealth’s share of LAC funding to at least 50 per cent, the Commonwealth would need to provide an additional \$190 million per annum.⁹
14. The Law Council acknowledges that the PwC figures are focused on LAC funding only and do not include the amounts required to address urgent unmet needs for CLCs and ATSILS—and, outside of the NLAP, Family Violence Prevention Legal Services. As such, the Justice Project recommendation should be viewed as a minimum estimate only. The Law Council considers that this shortfall is now more than \$500 million (even factoring in the additional money provided by the Commonwealth under the NLAP and through other initiatives).
15. The need for significant additional funding to address civil law issues remains essential. Despite the prevalence of legal need related to civil law issues, civil law matters only account for 4 per cent of grants for representation by LACs.¹⁰ Given that the Productivity Commission’s recommendation was made in 2014 and was suggested merely as an interim funding solution to ‘address the more pressing gaps’ in civil legal assistance services, the Law Council suggests that this figure is now likely to be a significant underestimate.
16. Further, the Law Council has recently re-engaged PwC to update its estimate of the level of additional funding required each year to return the Commonwealth to a 50 per cent share of legal aid funding with the states and territories.¹¹ The projected level of additional funding required in this regard in the current financial year is \$369.6 million.¹² This figure is almost double the figure initially included in the Law Council’s estimate in 2018.
17. The Law Council understands that the Reviewer’s final report will be presented to the Australian Government in February 2024. The Law Council is confident that this report will reflect the critical state of legal assistance sector funding and provide recommendations for improving this situation. The Law Council urges the Government to consider the recommendations of the Review as a matter of priority, and urgently address any recommendations relating to baseline funding through the 2024–25 Budget.

⁷ Law Council of Australia, *The Justice Project: Final Report* ([Legal Services Chapter](#), August 2018) 11, rec 2.1.

⁸ Productivity Commission, *Access to Justice Arrangements* (Inquiry Report No 72, 2014) 741, rec 21.4.

⁹ PwC, *Update to Projected Real Funding of Legal Aid Commissions* (Advice from PwC to the Law Council of Australia, January 2018).

¹⁰ PwC (for National Legal Aid), [The benefits of providing access to justice](#) (Report, January 2023) 4.

¹¹ PwC, *Update to Projected Real Funding of Legal Aid Commissions* (Advice from PwC to the Law Council of Australia, October 2023).

¹² *Ibid.*

Recommendations:

- **As submitted by the Law Council to the Independent Review of the National Legal Assistance Partnership, the Australian Government should provide a significant and ongoing increase in the funding of the legal assistance sector. This funding should include:**
 - **increased federal funding for Legal Aid Commissions across criminal, civil and family law matters, restoring the Commonwealth share of funding to 50 per cent; and**
 - **additional, ongoing and evidence-based resourcing for Community Legal Centres, Aboriginal and Torres Strait Islander Legal Services and—outside of the NLAP—Family Violence Prevention Legal Services.**
- **To the extent that the Report of the Independent Reviewer reflects the above recommendation, the Australian Government should urgently consider the recommendations of the Review as a matter of priority, and address any recommendations relating to baseline funding through the 2024–25 Budget.**

Private legal practitioners undertaking legal aid work

18. A particular focus of the Law Council’s submission to the NLAP Review was the impact that the current approach to funding and restrictions under the NLAP is having on the ability of LACs to engage members of the private legal profession to undertake legal aid work.¹³ By far the majority—78 per cent in 2022—of casework for legally assisted persons is undertaken by the private profession.¹⁴
19. The private legal profession is critical to the delivery of legal assistance services in Australia—particularly in the provision of legal aid services. The Australian legal aid system operates under a ‘mixed model’ of service delivery. Under this model, rather than relying solely on in-house lawyers, LACs brief out matters to members of the private profession at reduced rates—significantly below practitioners’ usual private rates. This allows LACs to draw on both in-house expertise and the experience and acumen of the private profession and provide access to legal assistance in areas that are not otherwise serviced by legal assistance services. It ensures that legally assisted clients are able to access this expertise despite their inability to pay privately for it.
20. Rates paid to the private legal profession are increasingly constrained by the quantum of funding provided to LACs under the NLAP. As a result of these constraints, the gap between fees charged by the legal profession on a private basis and those allocated when a matter is publicly funded through a grant by a LAC, continues to widen. In recent times, this has been particularly evident with the onset of higher than usual inflation.
21. Currently, approximately 72 per cent of all grants of aid work for LACs are undertaken by private practitioners.¹⁵ However, as a result of the increasing unviability of taking on legal aid briefs, the Law Council understands that fewer and

¹³ Law Council of Australia, Submission to Dr Warren Mundy, Independent Reviewer, [Independent Review of the National Legal Assistance Partnership](#) (27 October 2023) 16-19.

¹⁴ Impact Economics and Policy, [Justice on the Brink: Stronger Legal Aid for a Better Legal System](#) (Report prepared for National Legal Aid, November 2023) 18.

¹⁵ Ibid.

fewer practitioners are opting to taking on this work. For example, in South Australia between October 2018 and April 2022, available criminal lawyers per capita fell by 14 per cent, available civil lawyers per capita fell 15 per cent, and available family lawyers per capita fell 28 per cent.¹⁶ As noted in the recent *Justice on the Brink* report prepared by Impact Economics and Policy for National Legal Aid, this risks supply failure whereby LACs are not able to offer vital services and also risks a shrinking LAC footprint whereby services become unavailable to many Australians in RRR areas.¹⁷

22. The Law Council expects that, through an increase in core funding, private practitioner rates would increase to a level that better reflects the value of legal services and will go some way to attracting and retaining practitioners willing to undertake legal aid work. The *Justice on the Brink* report identified that \$69 million per annum is required to address the immediate threat of supply failure by increasing private practitioner fees by 18 per cent (that is, in line with national wage growth since 2013).¹⁸ The Law Council supports the implementation of this recommendation as a minimum.

Recommendation:

- **In accordance with the recommendation of the *Justice on the Brink* report, the Australian Government should provide an additional \$69 million per annum to Legal Aid Commissions to support increasing fees paid to private practitioners undertaking legal aid work by 18 per cent (in line with national wage growth since 2013).**

Increased legal assistance funding for family law matters

Independent Children's Lawyers

23. A significant contribution made by private practitioners undertaking legal aid funded work is the provision of ICL services. The Federal Circuit and Family Courts can appoint ICLs to represent and promote the best interests of a child in family law proceedings. In 2022–23 approximately 5,000 grants of Legal Aid were approved for the appointment of an ICL.¹⁹ There are approximately 600 ICLs currently on LAC panels.²⁰ The Law Council acknowledges the significant contributions made by ICLs to the practice of family law. The importance of well-trained and properly focused ICLs cannot be overstated.
24. The recent *Family Law Amendment Act 2023* (Cth) includes several measures regarding the roles of ICLs, including a requirement for ICLs to meet with a child, unless exceptional circumstances apply, and to give the child an opportunity to express a view.²¹ While the Law Council supports these measures in principle,²² additional funding is required to ensure that ICLs can meet the additional requirements.

¹⁶ Ibid 22.

¹⁷ Ibid 30.

¹⁸ Ibid.

¹⁹ National Legal Aid, [Independent Children's Lawyers submission](#) to Dr Warren Mundy, Independent Reviewer, *Independent Review of the National Legal Assistance Partnership* (24 October 2023) 3.

²⁰ Ibid 5.

²¹ *Family Law Amendment Act 2023* (Cth) sch 4.

²² For further consideration of these measures, see Law Council of Australia, [Submission](#) to Senate Legal and Constitutional Affairs Legislation Committee, Parliament of Australia, *Family Law Amendment Bill 2023* (3 July 2023) 38-44.

25. The Law Council continues to hold strong concerns that the current grants for funding of ICL appointments are limited and practitioners acting as ICLs are not appropriately remunerated for their expertise, time and travel. As noted by National Legal Aid, resourcing pressures ‘have reached a critical point such that recruitment and retention are now significant and immediate concerns’.²³ For example, the Law Council is aware that funding is not always provided to undertake key tasks for which an ICL has been engaged, including for:
- meetings with children in their own communities and/or away from city offices (adding further resource demands in RRR locations);
 - multiple meetings with children; or
 - liaising with Court Consultants, relevant health practitioners and/or educational institutions.
26. The recent reforms are likely to exacerbate these issues and, without additional funding, it is likely that fewer practitioners will be in a position to take on ICL work.

Recommendation:

- **The Australian Government should provide additional funding to Legal Aid Commissions to ensure that Independent Children’s Lawyers can perform the task for which they have been engaged, including meeting the additional requirements resulting from the implementation of the *Family Law Amendment Act 2023 (Cth)*.**

Addressing the additional demands on Legal Aid Commissions

27. The Law Council welcomes the MYEFO commitment to allocating \$17.1 million to LACs across Australia.²⁴ As noted by National Legal Aid, these funds are a crucial response to the rising need for legal assistance services in the Federal Circuit and Family Courts, due to the increase in referrals to court-based mediation and the extra hours of legal work required in family dispute resolution processes.²⁵
28. The Law Council notes that the MYEFO commitment is a one-off commitment to support LACs through to the end of the current financial year. However, the Law Council understands that the additional demands on LACs is highly unlikely to decrease in 2024–25. To prevent a reduction of the provision of legal aid family law services, the Australian Government should, at a minimum, extend the MYEFO commitment through the forward estimates.

Recommendation:

- **The Australian Government should extend the Mid-Year Economic and Fiscal Outlook 2023–24 commitment of \$17.1 million in 2023–24 to support legal aid commissions to provide legal representation in family law proceedings through the forward estimates.**

²³ National Legal Aid, [Independent Children’s Lawyers submission](#) to Dr Warren Mundy, Independent Reviewer, *Independent Review of the National Legal Assistance Partnership* (24 October 2023) 1.

²⁴ Australian Government, [Mid-Year Economic and Fiscal Outlook 2023–24](#) (13 December 2023) 217.

²⁵ National Legal Aid, [Continuation of vital family law funding welcomed](#) (Media Release, 14 December 2023).

Adequate legal assistance funding for First Nations legal services

Aboriginal and Torres Strait Islander Legal Services

29. In addition to a need for adequate funding for the legal assistance sector as a whole, there is also a need for immediate investment to achieve operational parity for ATSILS with other legal assistance services. This includes the following funding priorities:
- salary parity for staff (as against LAC salaries) where possible;
 - increasing the existing workforce to support safe work practices; and
 - providing a substantial capital injection for critical infrastructure (buildings and systems).
30. This would ensure that ATSILSs are able to expand their geographical reach, and give all Aboriginal and Torres Strait Islander people, regardless of their postcode, the choice of culturally safe, place-based, and community-controlled legal assistance services.
31. Funding should also ensure long term sustainable investment in the custody notification services provided by ATSILSs. The Law Council understands that the workload of these services has increased substantially in recent years. For example, in the 2022–23 financial year, the Aboriginal Legal Service (NSW/ACT) custody notification service received 29,563 notifications (an increase of approximately 19 per cent compared to the previous financial year).²⁶
32. Further, it is necessary to invest to support genuine partnership between government and First Nations legal services in order to develop and build a needs-based funding model, as required by the priority reforms identified in the National Agreement on Closing the Gap—and, in particular, Priority Reform 2.

Family Violence Prevention Legal Services

33. The Law Council acknowledges the important investment of \$68.6 million over two years in continuing funding for FVPLSs to ensure that they can continue to provide culturally safe services to Aboriginal and Torres Strait Islander victim-survivors of family violence.²⁷ However, it is important to note that this Budget measure only continued funding that was due to expire at the end of the financial year. The two-year funding commitment also severely restricts the operation of FVPLSs and limits their ability to plan for the future and attract staff.
34. To the extent that the issues raised in paragraphs 29 and 30 in relation to ATSILS also apply to FVPLSs, additional and sustainable resources should be provided.

²⁶ Aboriginal Legal Service (NSW/ACT), [Custody Notification Service](#) (Web Page).

²⁷ Hon Linda Burney MP, Minister for Indigenous Australians and Senator the Hon Malarndirri McCarthy, Assistant Minister for Indigenous Health, *Investing in a Better Future for Aboriginal and Torres Strait Islander People* (Media Release, 9 May 2023).

Recommendation:

- **The Australian Government should allocate adequate and sustainable resources for Aboriginal and Torres Strait Islander Legal Services and Family Violence Prevention Legal Services to allow them to provide culturally safe and effective legal services, and carry out the work intended as a part of the requirements of the National Agreement on Closing the Gap.**

Co-location of disability advocates

35. The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability noted in its Final Report that the data it received on the proportion of First Nations people with cognitive disability in custody, particularly in youth detention, exposes 'a hidden national crisis'. The Report identified the importance of care and support from Aboriginal Community Controlled Organisations to prevent people with disability entering the criminal justice system.²⁸

36. The Law Council notes that National Aboriginal and Torres Strait Islander Legal Services, in its submission to the Independent Review of the NLAP, recommended that:

As an urgent priority and recognising the significant number of Aboriginal and Torres Strait Islander people with disability in justice systems, the Commonwealth, State and Territory governments work in partnership with NATSILS, ATSILSs and the First Peoples Disability Network to develop an Aboriginal and Torres Strait Islander Disability Framework and operational plan which would co-locate disability advocates within NATSILS, ATSILSs and First People's Disability Network.²⁹

37. The Law Council supports the implementation of this recommendation.

Recommendation:

- **The Australian Government should provide funding to facilitate the development of an Aboriginal and Torres Strait Islander Disability Framework and operational plan as recommended by National Aboriginal and Torres Strait Islander Legal Services.**

²⁸ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Final Report* (September 2023) vol 8 ([Criminal Justice and People with Disability](#)), 4.

²⁹ National Aboriginal and Torres Strait Islander Legal Services, [Submission](#) to Dr Warren Mundy, Independent Reviewer, *Independent Review of the National Legal Assistance Partnership* (24 October 2023) 10, rec 17.

Access to legal assistance in rural, regional and remote communities

38. As at the 2021 Census, one-third of the Australian population resided outside of a greater capital city.³⁰ However, in 2022, only nine per cent of solicitors practised in a RRR location.³¹ Additionally, since 2011, RRR areas have experienced relatively little employment growth for solicitors (14 per cent), in contrast to suburban areas (85 per cent), city areas (67 per cent) and overseas locations (63 per cent).³²
39. These statistics indicate that the recruitment, retention and succession of legal practitioners in RRR areas presents an enduring challenge in Australia. Beyond these statistics lies the reality that this workforce shortfall adversely impacts access to justice and, by extension, human rights for individuals living in legally underserved communities. More broadly, lawyers in RRR areas—particularly small towns—are often the mainstay of many vital community and service organisations, and are crucial to the longevity and connectedness of their communities.
40. A lack of lawyers willing and able to undertake legal aid work in RRR areas will inevitably lead to an exacerbation of the consequences of legal services being unavailable. This means that accommodation and health services funded by the Australian Government will continue to experience additional and often unsustainable demand.
41. The Law Council is deeply concerned that individuals in certain RRR areas are unable to access timely legal assistance, advice and/or representation for critical matters. These include, for example, youth and adult criminal law matters, family law, child protection and family violence matters, discrimination, social security matters, credit and debt, consumer issues, tenancy matters and wills and estates. If insufficiently addressed, these matters can have far-reaching implications for individuals, their families and their communities, and can also negatively impact the functioning of the justice system.³³
42. In June 2023, the Regional Australia Institute reported that cost-of-living pressures are driving job dissatisfaction in all major capital cities and that two in five urban workers could be convinced to move to an RRR area if a financial incentive was involved.³⁴ The Law Council therefore supports a Commonwealth policy to incentivise appropriately qualified legal practitioners to live and work in RRR locations.
43. The Law Council believes that the Commonwealth should examine and employ, where appropriate, policy levers to address the insufficient numbers of legal practitioners in RRR areas where legal needs are greatest and facilitate improved access to justice for members of these communities. Specifically, the Law Council recommends that a Higher Education Loan Program (**HELP**) debt reduction and indexation relief initiative be introduced for qualified individuals who work in an

³⁰ Australian Bureau of Statistics, [Census 2021](#) (Web Page, June 2022).

³¹ Urbis, [2022 National Profile of Solicitors](#), Law Society of New South Wales (Report, April 2023) 3.

³² Ibid.

³³ Louise FitzRoy, [Regional lawyer shortage could jeopardise access to justice says Law Council](#), *ABC News* (Online, 5 November 2015).

³⁴ Regional Australia Institute, [Nearly half of all urban workers would move to regional Australia for a better salary](#) (Media Release, 4 July 2023).

eligible RRR area for a specific period of time, as has been introduced for health practitioners and teachers.

44. In December 2023, the Law Council published a Position Paper titled [HELP debt reduction and indexation relief for legal practitioners working in rural, regional and remote locations](#) which:
- examines several models that have been introduced by the Commonwealth to increase the numbers of health care workers and teachers living and working in RRR areas;
 - recommends a suitable incentivisation model for legal practitioners—a HELP debt and indexation relief program; and
 - undertakes a financial impact analysis of the preferred model.³⁵
45. The Law Council recommends the implementation of a model similar to the *HELP for Rural Doctors and Nurse Practitioners* scheme,³⁶ established under the *Higher Education Support Act 2003* (Cth) in 2023 and administered by the Commonwealth Department of Education.
46. Under the existing *HELP for Rural Doctors and Nurse Practitioners Scheme*, individuals must meet the eligibility criteria and complete the required amount of work in an eligible rural, remote or very remote location to partially or fully reduce their outstanding HELP debt.³⁷ The required amount of time for an individual to eliminate their debt will vary, depending on how remote the location is, and how many years of study were undertaken. This existing scheme also allows for the waiver of indexation on an eligible participant's outstanding HELP debt for the period they live and complete eligible work in an RRR area.³⁸
47. The Law Council considers that the implementation of a similar model for legal practitioners would significantly increase the incentives for legal practitioners to work in RRR areas. The Law Council acknowledges that such debt relief scheme may be of particular interest to early career lawyers, who are typically more mobile and will have the largest HELP debts. However, as HELP debts are currently taking law graduates approximately a decade to pay off,³⁹ more experienced practitioners—such as those with six to 10 years of post-admission experience—are likely to also have an interest in taking advantage of a HELP debt relief scheme to eliminate their remaining debt. This may be of particular interest if practitioners have been out of the workforce for a period, such as due to parental leave. Therefore, such a scheme will, importantly, facilitate the supervision and mentorship of junior practitioners in RRR areas, and will also assist with succession arrangements for legal practices in these locations.
48. Beyond incentivising legal practitioners to relocate to an eligible RRR area, a key benefit of such a proposal is that it is unlikely to require significant new Commonwealth expenditure. Rather, this scheme would be primarily funded by the forgiveness of monies already expended by the Commonwealth in the form of such debts.

³⁵ Law Council of Australia, [HELP debt reduction and indexation relief for legal practitioners working in rural, regional and remote locations](#) (Position Paper, December 2023).

³⁶ Department of Health and Aged Care, [HELP for Rural Doctors and Nurse Practitioners](#) (Web Page, September 2023).

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ Department of Education, [2019-19 HELP report data extract](#) (Web Page, August 2021).

Recommendation:

- **Consideration should be given to the establishment of a Higher Education Loan Program debt relief scheme for legal practitioners who reside and work in eligible rural areas, to incentivise the recruitment and retention of qualified lawyers in underserved areas.**

Funding of the federal courts and tribunals

Baseline funding of the federal courts

49. Australia's federal court system comprises the Federal Court of Australia (**FCA**), with broad original and appellate jurisdiction (particularly in relation to civil matters arising under Australian federal law), the Federal Circuit and Family Court of Australia (Division 1), a continuation of the previous Family Court of Australia with original and appellate jurisdiction in family law, and the Federal Circuit and Family Court of Australia (Division 2) with jurisdiction across family law and child support, migration law and a broad range of general federal law.
50. The federal courts have been the subject of extensive transformation in recent years. The Law Council notes that efficiency and administrative savings (including through the increased use of technology) are important components in increasing timeliness, efficiency and fairness. However, such measures are not alone sufficient to address the current backlogs and high workloads afflicting the federal courts and tribunals. The federal courts' ability to implement these measures depends on sustained resourcing for court staffing, facilities and IT infrastructure.
51. From 1 July 2016, the *Courts Administration Legislation Amendment Act 2016* (Cth) consolidated the administration of the federal courts. In its 2022–23 Annual Report, the FCA noted the financial pressure facing the federal courts:

The Entity [i.e., the amalgamated administration of the federal courts] was budgeting a break-even position for the year, with the surplus stemming from delays in judicial appointments (and resultant savings in employee expenses) and the time taken to recruit staff to fill newly funded positions.

The Courts operate under strict budgetary controls ensuring that the Entity operates within the appropriation. The next three-year budget cycle continues to challenge the Entity to make further savings. With over 60 per cent of the Entity's costs relating to property and judicial costs, which are largely fixed, the ability to reduce costs is limited.

52. Law Council notes that the MYEFO included an additional \$48.5m over four years for the Federal Circuit and Family Courts to provide additional capacity—including through the appointment of 10 additional judges—to resolve outstanding protection visa and other migration-related cases.⁴⁰ However, the Law Council remains of the view that the capacity of the federal courts to resolve matters both swiftly and fairly

⁴⁰ Australian Government, [Mid-Year Economic and Fiscal Outlook 2023–24](#) (13 December 2023) 271. See also Hon Andrew Giles MP, Minister for Immigration, Citizenship and Multicultural Affairs, the Hon Mark Dreyfus KC MP, Attorney-General and the Hon Clare O'Neil MP, Minister for Home Affairs, [Restoring integrity to our protection system](#) (Media Release, 5 October 2023).

is being hampered by insufficient resourcing in the face of broadening demand for their services.

53. As a particular example of the increasing demands on the federal courts, the Law Council notes that the Attorney-General's Portfolio Miscellaneous Measures Bill 2023 (Cth)—which is currently before the Australian Parliament—proposes to confer on the FCA increased criminal law jurisdiction, including jurisdiction to hear and determine a range of summary and indictable offences relating to conduct within the regulatory remit of the Australian Securities and Investments Commission. This is a significant change in the role of the FCA, which will likely increase the caseload of the court. New resourcing is needed to ensure that the Bill can achieve its purpose of reducing delays in prosecuting criminal corporate crime. Additional funding will also be required to address implementation and (increased) administrative costs (for example, relating to jury selection and management, transfers of proceedings and appeals).
54. The Law Council considers that additional funding is necessary for the federal courts to efficiently process disputes and provide a fair outcome to participants. In the Law Council's view, this must include funding to support the appointment of additional judges over and above current levels, providing adequate resources for registries, improving relevant technology and infrastructure, and improving services in RRR areas.

Recommendations:

- **The Australian Government should increase the baseline resourcing of the federal courts including by:**
 - **appointing additional judges;**
 - **promptly filling vacancies;**
 - **providing increased resources for registries;**
 - **improving relevant technology and infrastructure; and**
 - **improving court services in rural, regional and remote areas.**

Federal Circuit and Family Courts

Information sharing

55. The *Family Law (Information Sharing) Act 2023 (Cth)* and supporting regulations set out a framework that enables the Federal Circuit and Family Courts to make orders that prescribed state and territory government agencies provide information and documents relevant to the risk of abuse, neglect or family violence in family law proceedings. The Law Council notes that, in responding to these orders, agencies are to be guided by high-level information-sharing safeguards, prescribed in the regulations. In large part, the efficacy of this scheme will depend on the Federal Circuit and Family Courts being resourced to administer the scheme, and relevant agencies being adequately resourced to respond to Court orders effectively.

Information resources

56. The Law Council understands that the Federal Circuit and Family Courts are undertaking to produce key information resources in a limited number of community languages. The provision of key information and materials such as Practice Directions in all major community languages, using trauma-informed, culturally appropriate language, is a significant access to justice issue for self-represented litigants in the family law jurisdiction. The Law Council suggests allocating resources to expand the Federal Circuit and Family Courts' translation project to encompass all major community languages.

Recommendation:

- **The Australian Government should:**
 - **provide funding to resource the Federal Circuit and Family Courts to administer the information sharing regime effectively, and work with the states and territories to ensure protocols, training and resourcing is available to promptly respond to information sharing orders; and**
 - **allocate resources to expand the Federal Circuit and Family Courts' translation project to encompass all major community languages.**

Litigation guardians

57. Litigation guardians may be appointed by the Federal Circuit and Family Courts in matters where a party lacks legal capacity to provide instructions, for example due to disability.⁴¹ As discussed at paragraph 63 below, the proposed ART will also be given the power to appoint a person to be a litigation guardian for a party in the Tribunal.
58. However, the Law Council understands that there has been a long-standing issue in sourcing litigation guardians. The Law Society of New South Wales has advised that it regularly receives requests from its members, the Courts and the Attorney-General's Department to refer practitioners who are willing to act as litigation guardians in appropriate family law matters, though noting that litigation guardians are not required to be legal practitioners.
59. The Law Council is aware that in some state jurisdictions administrative frameworks have been established which provide indemnity from liability for litigation guardians. For example, in New South Wales, the Government provides for a coordinator of the 'Guardian Ad Litem Panel' (including coordinating the appointment process). Further, members of the Guardian Ad Litem Panel who are appointed under the *Children and Young Persons (Care and Protection) Act 1998* (NSW) to appear in the Children's Court are exempt from any personal action or liability if they act in good faith.⁴² However, no such framework exists in the federal jurisdiction.

⁴¹ See *Federal Circuit and Family Court of Australia (Family Law) Rules 2021* (Cth) pt 3.5.

⁴² *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 101A.

Recommendation:

- **The Australian Government should establish and fund a scheme to facilitate the coordination of litigation guardians in federal courts and tribunals and develop legislation to provide for the appointment of litigation guardians in federal courts with appropriate protection from liability.**

Administrative Review Tribunal

60. The Administrative Review Tribunal Bill 2023 (Cth) (**ART Bill**) and the Administrative Review Tribunal (Consequential and Transitional Provisions No. 1) Bill 2023 (Cth) are currently before the Australian Parliament. If passed, these Bills will establish the new ART replacing the current Administrative Appeals Tribunal (**AAT**).
61. The Law Council understands that primary funding for the ART will be provided in the upcoming Budget. Noting the repeated references to under-resourcing in the AAT's Annual Report 2022–23, it is critical that increased funding is provided to the ART to ensure that it can meet its key objectives upon establishment.
62. In addition, the Law Council calls on the Australian Government to ensure that the related services that will support those who engage with the ART are adequately funded. These services include, in particular, the provision of a publicly funded legal representation/advice scheme so that the ART can ensure an applicant's right to representation, access to an interpreter when required, and access to litigation guardians.
63. Clause 67 of the ART Bill provides that the Tribunal may, by order, appoint a person to be a litigation guardian for a party in the Tribunal, if the Tribunal considers that the party does not understand the nature and possible consequences of the proceeding or is not capable of adequately conducting, or giving adequate instruction for the conduct of, the proceeding. As noted above, the Law Council considers that the Australian Government should establish and fund a scheme to facilitate the coordination of litigation guardians in federal courts and tribunals.
64. Clause 68 of the ART Bill would enable the Tribunal to appoint interpreters for purposes of communication between persons and Tribunal—in fact, clause 68 would *require* the appointment of an interpreter where a person is not sufficiently proficient in English to effectively communicate with the Tribunal. This provision is welcome. However, it is likely to increase demand for interpreters. Noting existing difficulties in ensuring an appropriate, professional, skilled supply of interpreters, it is imperative that the Australian Government further invest in this vital service.

Recommendation:

- **Alongside funding to establish and operate the new Administrative Review Tribunal, the Australian Government should provide additional and adequate funding for the related services that will support those who engage with the Tribunal, including legal representation/advice, interpreters and litigation guardians.**

Fair Work Commission

65. In December 2023, the President of the FWC, Justice Hatcher, summarised the recent increasing workload of the FWC in the following terms:

*Our workload for 2023–24 so far has been 13% higher than the 5-year average. Lodgments in November 2023 were the third highest for an individual month within the past 4 calendar years. Lodgments were above average in 11 of the 18 case categories in November, including our highest-volume case types - Unfair Dismissal (+8%), General Protections Dismissal (+14%) and Agreement Approvals (+28%).*⁴³

66. Although Justice Hatcher states that ‘the Commission remains in a strong position to continue to deliver our core services in a timely manner, whilst also implementing legislative changes’,⁴⁴ the Law Council notes that the raft of federal workplace law reforms from 2022–23 is likely to further increase the overall workload of the FWC in 2024.
67. The *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (Cth) expanded several of the FWC’s functions relating to workplace bargaining, enterprise agreements, workplace sexual harassment, disputes about flexible work arrangements and extensions of unpaid parental leave. The legislation also conferred obligations on the FWC to establish expert panels relating to the care and community sector and gender pay equity, and to absorb the functions of the Registered Organisations Commission. Justice Hatcher has previously described these changes as ‘a generational shift in the administration of Australia’s industrial relations system’.⁴⁵
68. The impact of the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023* (Cth) is likely to include a higher number of redundancy payment claims, following the removal of the ‘small business’ exemption, and a higher number of PTSD-related claims by first responders, based on the new assumption that their condition is work-related. There are also likely to be claims testing uncertain provisions in the legislation, including uncertainty as to the scope of employment arrangements captured by reforms aimed at closing the ‘labour hire loophole’.
69. Given the current increased workload, and in light of significant reforms which may come into effect in 2024, the Australian Government should carefully consider increasing current funding for the FWC.
70. Additionally, the Law Council suggests that resourcing is required to further modernise the FWC’s remote conferencing facilities. Even after a recent facilities upgrade, staff-led conciliations are limited to audio conferencing. Legal practitioners report that, in the majority of cases, the use of video conferencing is extremely valuable in facilitating early dispute resolution. As such, video conferencing should be the default medium for all remote conferencing, while allowing the parties to agree to revert to audio in appropriate matters, such as where trauma is involved.

⁴³ Justice Adam Hatcher, [Fair Work Commission’s 2023 work and 2023-24 performance](#) (President’s Statement, 22 December 2023) [13].

⁴⁴ Ibid [3]. See also Justice Adam Hatcher, [Fair Work Legislation Amendment \(Closing Loopholes\) Act 2023](#) (President’s Statement, 20 December 2023).

⁴⁵ Fair Work Commission, [Annual Report 2022-2023: Access to Justice](#) (18 October 2023) 9.

Recommendation:

- **The Australian Government should ensure that Fair Work Commission is adequately resourced to implement the workplace reform agenda, and to support dispute resolution through remote conferencing.**

Supporting the rule of law and administration of justice

Establishment of a Federal Judicial Commission

71. The Law Council has formally supported the establishment of an FJC since 2006 and, in December 2020, published a policy statement on [Principles underpinning a Federal Judicial Commission](#).⁴⁶
72. In the 2022–23 Budget, the Australian Government committed to scoping the merits and design of an FJC.⁴⁷ In January 2023, the Attorney-General’s Department released a Discussion Paper entitled ‘Scoping the establishment of a federal judicial commission’.⁴⁸ It is understood that feedback provided in response to this consultation is still under consideration by the Department.
73. It is essential to the promotion of the rule of law and the Australian constitutional system that there be a strong, independent and transparent judiciary. It is therefore critical that there is a well-understood means of fairly and punctually addressing complaints about the federal judiciary in an independent and structured manner. The Law Council strongly supports the establishment of an FJC to perform this function.
74. The Law Council also considers that the role of an FJC should extend to providing resources, support and education to the judiciary, including providing guidance on acceptable standards of judicial conduct. Such a function would facilitate the FJC—and therefore, the federal judiciary—to learn from complaints, to effect improvements in processes, to further equip judicial officers with the necessary knowledge and skills, and to identify circumstances requiring additional pastoral care.⁴⁹
75. In the Law Council’s view, the FJC should be established as soon as practical—preferably, in the 2024–25 Financial Year. The Australian Government should therefore include funding to establish and adequately resource a federal judicial commission in the upcoming Budget.

⁴⁶ Law Council of Australia, [Principles underpinning a Federal Judicial Commission](#) (Policy Statement, December 2020) 5.

⁴⁷ Hon Mark Dreyfus KC MP, Attorney General, ‘[Investing in Integrity, Human Rights and Safety](#)’ (Media Release, 25 October 2022).

⁴⁸ Attorney-General’s Department, [Scoping the establishment of a federal judicial commission](#) (Discussion Paper, January 2023).

⁴⁹ Australian Law Reform Commission, [Without Fear or Favour: Judicial Impartiality and the Law on Bias](#) (Final Report, December 2021) 335-336.

Recommendation:

- **The Australian Government should establish and adequately resource a Federal Judicial Commission to deal with any allegation of lack of competency, serious misconduct or corruption in the federal courts. The Federal Judicial Commission should also support the provision of education, training and support for judicial officers.**

Establishment of a Federal Parole Authority

76. Under Part 1B of the *Crimes Act 1914* (Cth), all parole applications for federal offenders are determined by the Commonwealth Attorney-General. The Attorney-General is supported by an administrative unit within the Attorney-General's Department known as the Commonwealth Parole Office (CPO).
77. Decisions affecting the liberty of individuals should be made in a transparent, accountable, and independent manner. Parole, as a form of conditional release of offenders into the community to serve part of their sentence, engages the basic right of individuals to their liberty.
78. The current approach to considering parole applications for federal offenders raises a number of potential issues, including:
- risk of perceived or real political interference;
 - arbitrary refusal of parole for offenders convicted of certain types of offences;
 - inconsistent treatment of state and federal offenders;
 - absence of necessary decision-making expertise to achieve the objectives of the parole system; and
 - inadequacy of legal assistance funding.
79. To address these issues, the Law Council recommends that the Australian Government establish a Federal Parole Authority as an independent statutory body, empowered to make parole decisions. In November 2022, the Law Council released a [Position Paper](#) outlining a set of key principles which should underpin the establishment of a Federal Parole Authority.⁵⁰ The four key design principles include independence, transparency, procedural fairness, and accountability.
80. To ensure its independence, the Federal Parole Authority should be established as an agency separate to the current CPO. It should be overseen by an agency head who is appointed by the Governor-General (subject to statutory protections to ensure their independence and expertise) and have staff who are employed directly under the governing Act. The membership of a federal parole authority should include a mix of legally qualified persons and individuals with broader inter-disciplinary expertise relevant to the objectives of the parole system and should reflect a diverse range of viewpoints and experiences from across the community.
81. To better support the effectiveness of a Federal Parole Authority, an OMFO should be established. Importantly, the functions of the OMFO should include maintaining an up-to-date case management database of all federal offenders and a victim notification register.

⁵⁰ Law Council of Australia, *Principles underpinning a federal parole authority* (Position Paper, November 2022).

Recommendation:

- **The Australian Government should establish and adequately resource a Federal Parole Authority as an independent statutory body empowered to make parole decisions relating to individuals convicted of federal offences. The Federal Parole Authority should be supported by the establishment of an Office for the Management of Federal Offenders.**

Establishment of a Whistleblower Protection Authority

82. On 30 November 2022, the Attorney-General, the Hon Mark Dreyfus KC MP, announced that the Australian Government would commence a staged approach to reforming the *Public Interest Disclosure Act 2013* (Cth).⁵¹ The first stage of reforms, as contained in the *Public Interest Disclosure Amendment (Review) Act 2023* (Cth), commenced on 1 July 2023.
83. In November 2023, the Attorney-General's Department began consulting on a second stage of public sector whistleblowing reform.⁵² A key component of this consultation process was to consider the current roles of the relevant oversight and integrity agencies, and whether a WPA or Commissioner should be established.⁵³
84. In its 2017 *Whistleblower Protections* Report, the Parliamentary Joint Committee on Corporations and Financial Services (**PJCCFS**) recommended that a WPA covering both the public and private sectors be established to exercise the following functions:
- provide a clearinghouse for whistleblowers bringing forward public interest disclosures;
 - provide advice and assistance to whistleblowers; and
 - support and protect whistleblowers, including by:
 - investigating non-criminal reprisals in the public and private sectors; and
 - taking non-criminal matters to the workplace tribunal or courts on behalf of whistleblowers or on the agency's own motion to remedy reprisals or detrimental outcomes in appropriate cases.⁵⁴
85. The Law Council acknowledges that there is a public interest in ensuring appropriate protections are afforded to whistleblowers in the public and private sectors. The Law Council strongly supports significant reform to simplify and clarify whistleblowing laws in Australia and provide improved access to necessary support and guidance for whistleblowers.

⁵¹ Hon Mark Dreyfus KC MP, Attorney General, '[Public Interest Disclosure Reform](#)' (Media Release, 30 November 2022).

⁵² Attorney-General's Department, [Public sector whistleblowing reforms: Stage 2 – reducing complexity and improving the effectiveness and accessibility of protections for whistleblowers](#) (Consultation Paper, November 2023).

⁵³ Ibid.

⁵⁴ Parliamentary Joint Committee on Corporations and Financial Services, Parliament of Australia, [Whistleblower Protections](#) (Report, September 2017) 157-159, recommendation 12.1.

86. Since the release of the PJCCFS Report, the Law Council has consistently expressed strong support for the establishment of a comprehensive whistleblower regime including the creation of a WPA. The Law Council continued this advocacy in its submission to the Attorney-General's Department.⁵⁵
87. A particular advantage of establishing a WPA is that it could promote the exposure of wrongdoing, which can otherwise be difficult to detect and may assist in triggering investigation by the relevant agency. A WPA may also provide an avenue for members of the public and employees in Commonwealth government agencies to be able to obtain independent, anonymous advice about issues that relate to disclosure and reporting of suspected wrongdoing which is not presently available. This itself may assist in promoting the reporting of undesirable conduct.

Recommendation:

- **The Australian Government should establish and adequately resource a Whistleblower Protection Authority.**

Agency resourcing

Australian Human Rights Commission

88. The Law Council notes that additional funding was provided to the AHRC in the 2022–23 Budget to somewhat address its long-term underfunding in light of its varied and increasing program of work.⁵⁶ However, members of the legal profession have reported that, in AHRC workplace harassment and discrimination matters, there are delays of 6–12 months after filing before the employer is notified of the complaint, and further months of delay before the conciliation hearing. The Law Council also understands that the AHRC is unable to provide benchmarks for responding to and resolving complaints due to resourcing constraints.
89. The Law Council notes that the most recent *Respect@Work* reforms implemented under the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (Cth) impose a positive duty on employers to prevent workplace sexual discrimination and harassment. The increased workload arising from these reforms is likely to exacerbate the existing delays in the workplace discrimination and harassment jurisdiction.
90. The Law Council considers that careful scrutiny is needed as to whether the AHRC's base funding is sufficient to ensure that it can carry out its core functions effectively.

Recommendation:

- **The Australian Government should ensure that the Australian Human Rights Commission is adequately resourced to effectively carry out its investigation, complaint and conciliation functions and its function of enhancing public education and human rights resources.**

⁵⁵ Law Council of Australia, Submission to Attorney-General's Department, [Public sector whistleblowing reforms: Stage 2](#) (22 December 2023).

⁵⁶ Hon Mark Dreyfus KC MP, Attorney General, 'Investing in Integrity, Human Rights and Safety' (Media Release, 25 October 2022).

Dedicated National Commissioner for Aboriginal and Torres Strait Islander Children

91. There have been calls by several civil society organisations for the establishment of a dedicated national Commissioner for Aboriginal and Torres Strait Islander children.⁵⁷ An options paper prepared and published by SNAICC and King & Wood Mallesons in 2020 set out a compelling case for a dedicated Commissioner in light of the multiple and intersecting forms of discrimination and disadvantage faced by Aboriginal and Torres Strait Islander children and young people and their unique needs.⁵⁸ The model proposed in that paper, which is based on best practice requirements for each element of the Paris Principles, should be strongly considered by the Australian Government.

Recommendation:

- **The Australian Government should consider the establishment of a dedicated National Commissioner for Aboriginal and Torres Strait Islander Children.**

Anti-Slavery Commissioner

92. In line with its relevant recommendation to the Review of the *Modern Slavery Act 2018* (Cth),⁵⁹ the Law Council welcomes the Budget allocation of \$8 million over four years, plus \$2 million per year thereafter, for the establishment of a new Australian Anti-Slavery Commissioner. However, the Law Council has received input that this funding envelope may prove inadequate for the Commissioner to adequately address the breadth of work that is likely to arise under the Anti-Slavery Commissioner Bill 2023 (Cth) after it passes.
93. The experience of the NSW Anti-Slavery Commissioner, as outlined in his submission to the 2023/24 Parliamentary Review of the *Modern Slavery Act 2018* (NSW),⁶⁰ has been that his office requires 18–30 FTE personnel to fulfil its functions under the Act adequately.⁶¹ The Commonwealth Anti-Slavery Commissioner may not have identical functions, but will have responsibilities across the whole country, rather than just NSW. As such, the Commissioner's office is likely to require similar staffing levels, at a minimum. Taking the associated overheads into account, \$2m per annum will not be sufficient to provide such staffing levels.

Recommendation:

- **The Australian Government should consider increasing the funding allocation for the Australian Anti-Slavery Commissioner to provide for a reasonable number of support staff, taking into account the scale of the problem to be addressed across the country, and the resourcing experience of the NSW Commissioner.**

⁵⁷ See, eg, See, Save the Children and 54 Reasons, Submission No 168 to the Parliamentary Joint Committee on Human Rights, Inquiry into Australia's Human Rights Framework (10 July 2023).

⁵⁸ SNAICC and King & Wood Mallesons, *Models for a National Commissioner for Aboriginal and Torres Strait Islander Children and Young People* (Options Paper, 17 December 2020).

⁵⁹ Law Council of Australia, Submission to Attorney-General's Department, [Review of Australia's Modern Slavery Act 2018](#) (13 December 2022) [211]-[219].

⁶⁰ Office of the NSW Anti-slavery Commissioner, Submission No 8 to Modern Slavery Committee, Legislative Council, Parliament of New South Wales, [Inquiry into Review of the Modern Slavery Act 2018](#) (5 October 2023) [106]-[116].

⁶¹ *Ibid* [109].

Implementation of the National Plan to End Violence against Women and Children 2022–2032

94. The National Plan to End Violence against Women and Children 2022–2032 (**National Plan**) is a key joint Australian, state and territory government response to the widespread problem of domestic and family violence, which spans geographic, socio-economic and cultural sectors of Australian society. The National Plan outlines a multi-pronged approach, with initiatives and services focused on prevention, early intervention, response, and recovery and healing for victims.⁶²
95. The *First Action Plan 2023–2027* under the National Plan (**First Action Plan**) commits to increasing and strengthening the capability of mainstream and specialist workforces to deliver quality services, activities and programs across these four domains.⁶³
96. The National Plan specifically seeks to address the disproportionate rates of violence experienced by Indigenous women and children, in alignment with Target 13 of the National Agreement on Closing the Gap. The First Action Plan commits to working in partnership with Aboriginal and Torres Strait Islander communities to ensure policies and services are culturally competent, strengths-based, trauma-informed, and meet the needs of these communities.⁶⁴ Additionally, the *Aboriginal and Torres Strait Islander Action Plan 2023–2025* commits to undertaking initiatives and services across the four domains outlined in the National Plan through five reform areas: voice, self-determination and agency; strength, reliance and therapeutic healing; reform of institutions and systems; evidence and data; and inclusion and intersectionality.⁶⁵
97. To support the measures recommended in the National Plan (and related documents), sustained funding is required for appropriately targeted specialist legal assistance services, as well as for social and economic measures.

⁶² Department of Social Services, [National Plan to End Violence against Women and Children 2022-2032](#) (17 October 2022) 20.

⁶³ Department of Social Services, [First Action Plan 2023-2027 under the National Plan to End Violence against Women and Children 2022-2032](#) (16 August 2023) 13, 30.

⁶⁴ *Ibid* 13, 46.

⁶⁵ Department of Social Services, [Aboriginal and Torres Strait Islander Action Plan 2023-2025 under the National Plan to End Violence against Women and Children 2022-2032](#) (16 August 2023) 46.

Recommendation:

- **The Australian Government should ensure adequate funding is provided for appropriately targeted specialist legal assistance services, as well as for social and economic measures, including:**
 - **increased funding for community legal centres and specialist legal services to provide advice and representation in domestic and family violence matters;**
 - **community education programs to address the cultural norms of gender inequality at the foundation of violence against women and their children; and**
 - **integrated programs and services in respect of areas such as police services, school- and university-based services, crisis health and accommodation services, financial assistance services, and perpetrator behaviour change programs, as well as the expansion of integrated legal services for victim-survivors of sexual assault.**

Protecting and supporting the rights of older Australians

The New Aged Care Act

98. Recommendation 1 of the Final Report of the Royal Commission into Aged Care Quality and Safety related to the establishment of a new act to replace the *Aged Care Act 1997* (Cth).⁶⁶ In August 2023, the Department of Health and Aged Care commenced the first stage of its consultation process to inform the implementation of this recommendation (**Consultation Paper No. 1**).⁶⁷
99. The Law Council provided a submission in response to this consultation on 29 September 2023. In that submission, the Law Council identified a number of areas that will require financial support from the Australian Government to assist with the effective implementation of the new Aged Care Act.
100. Consultation Paper No. 1 considers the establishment of an Aged Care Complaints Commissioner to oversee a revised complaints model.⁶⁸ The Law Council notes that, to ensure that the rights of older persons are being upheld, it is imperative that there are properly resourced legal assistance services to support potential complainants.⁶⁹
101. Additionally, Consultation Paper No. 1 noted that the new Aged Care Act will 'provide an opportunity to ensure that the role of legal representatives and their responsibilities relating to supported decision making is clarified'.⁷⁰ The Law Council strongly supports the application of supported decision making, consistent with the

⁶⁶ Royal Commission into Aged Care Quality and Safety, [Final Report: Care, Dignity and Respect](#) (1 March 2021).

⁶⁷ Department of Health and Aged Care, [A New Aged Care Act: the foundations—Consultation Paper No. 1](#) (4 August 2023).

⁶⁸ *Ibid* 18.

⁶⁹ Law Council of Australia, Submission to Department of Health and Aged Care, [A New Aged Care Act: the foundations—Consultation Paper No. 1](#) (29 September 2023) [120].

⁷⁰ Department of Health and Aged Care, [A New Aged Care Act: the foundations—Consultation Paper No. 1](#) (4 August 2023) 39.

Australian Law Reform Commission's National Decision-Making Principles.⁷¹ However, it observes that there needs to be further thought on how the new Aged Care Act interacts with state and territory legal frameworks, including those underpinned by substitute-decision making.⁷²

102. The Law Council reiterated in its submission that there needs to be greater consistency across a range of state, territory and Commonwealth laws concerning individual decision-making, noting national leadership is critical. To achieve this, there is a need for accompanying funding support and education.⁷³

Recommendation:

- **The Australian Government should provide appropriate funding to support the implementation of the new Aged Care Act. In particular:**
 - **funding for properly resourced legal assistance services for complainants who have made or are escalating complaints to the new Aged Care Complaints Commissioner; and**
 - **funding to support and achieve consistency amongst state, territories and the Commonwealth concerning individual decision-making.**

Superannuation Death Benefit Framework

103. Superannuation entitlements represent one of the largest assets owned by most Australians upon their retirement. However, where a superannuation fund member dies before receiving the entitlement, the law is not settled in regard to how superannuation death benefits should be disposed and there is significant complexity and ambiguity about the effect of such nominations in a range of different circumstances.
104. In 2017, the ALRC recommended a review be conducted by the Treasury into the structure and drafting of the provisions in the *Superannuation Industry (Supervision) Act 1993 (Cth) (SIS Act)* and *Superannuation Industry (Supervision) Regulations 1994 (Cth)* to seek to address complexities and ambiguities.⁷⁴ As noted by the ALRC, the ability to make a binding death benefit nomination is a key aspect of advance planning, and clarity around the process for making these nominations will assist to provide autonomy to older persons and reduce the risk of elder abuse.
105. The Law Council has recently written to the Treasurer and the Assistant Treasurer repeating its calls for the Australian Government to investigate reform to the regulatory framework in relation to superannuation death benefit nominations.
106. The Law Council considers that the superannuation death benefit framework should be simplified and improved by amending the SIS Act to require all superannuation death benefits to form part of the estate of a deceased person, except where that person has made a binding death benefit nomination. In the Law Council's view this reform would provide greater certainty and autonomy for all members of

⁷¹ Law Council of Australia, Submission to Department of Health and Aged Care, [A New Aged Care Act: the foundations—Consultation Paper No. 1](#) (29 September 2023) [147].

⁷² Ibid.

⁷³ Ibid [149].

⁷⁴ Australian Law Reform Commission, Elder Abuse—A National Legal Response (ALRC Report 131, June 2017) rec 7-1 <https://www.alrc.gov.au/wp-content/uploads/2019/08/elder_abuse_131_final_report_31_may_2017.pdf>.

superannuation funds in their succession planning, is consistent with key rule of law principles, and would significantly reduce delays in the provision of superannuation death benefits.

Recommendation:

- **The Australian Government should fund a review of the regulatory framework in relation to superannuation death benefit nominations.**

Protecting the rights of individuals in detention

Optional Protocol to the Convention Against Torture

107. The Law Council remains concerned about the state of Australia's implementation of the OPCAT, which Australia ratified in 2017.
108. As a signatory to the OPCAT,⁷⁵ Australia is required to:
- (a) establish NPMs for the prevention of torture, which examine the treatment of persons deprived of their liberty in places of detention and make recommendations to the relevant authorities with the aim of improving the treatment and conditions of such persons;⁷⁶ and
 - (b) make available the necessary resources for the functioning of NPMs.⁷⁷
109. NPMs must be established in all domestic jurisdictions (the Commonwealth and states and territories). However, not all states and territories established NPMs before the extended deadline for doing so: 20 January 2023.
110. The December 2023 visit report of the United Nations Subcommittee on Prevention of Torture (**SPT**) makes it clear that detention facilities around Australia are in urgent need of better oversight and accountability mechanisms.⁷⁸ As recommended by the SPT, Australian governments collectively need to step up their efforts to establish a comprehensive nationwide NPM network, backed by appropriate legislation and adequately funded to fulfil its role under the OPCAT.⁷⁹
111. The Law Council acknowledges that the task of ensuring OPCAT compliance across Australia is complex and requires a negotiated outcome involving the states and territories. It is vitally important that the Australian Government lead these efforts as a priority. The Law Council also acknowledges that the Australian Government has offered some non-ongoing funding for NPM establishment, and (through the Standing Council of Attorneys-General) has committed alongside the state and territory governments to work together towards implementation.⁸⁰ However, specific commitments followed by immediate implementation are now required.

⁷⁵ UN General Assembly, *Optional Protocol to the Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment*, 9 January 2003, A/RES/57/199.

⁷⁶ *Ibid* articles 17 and 19.

⁷⁷ *Ibid* article 18(2).

⁷⁸ UN SPT, *Visit to Australia undertaken from 16 to 23 October 2022: recommendations and observations addressed to the State party*, UN Doc CAT/OP/AUS/ROSP/1, 20 December 2023.

⁷⁹ *Ibid*, 3-5.

⁸⁰ Senate Estimates, Legal and Constitutional Affairs Legislation Committee, *Parliamentary Debates (Senate)*, 24 October 2023, 59-60.

112. The forthcoming Budget provides an opportunity for the Australian Government to make a financial contribution to expeditious implementation of all of Australia's obligations under OPCAT.
113. The Australian Government should also provide leadership on the implementation of OPCAT by funding, on a sustainable basis, the Office of the Commonwealth Ombudsman to perform its Commonwealth NPM and national NPM coordination functions. The Commonwealth Ombudsman has recently given evidence to the Senate Legal and Constitutional Affairs Legislation Committee that, although his office is funded for just 3.8 staff to perform NPM functions, more than 10 people are currently performing those functions.⁸¹ The Law Council is concerned that this apparent reallocation of staff within the Commonwealth Ombudsman's office is likely to be inhibiting its ability to perform its other critical functions.

Recommendations:

- **The Australian Government should contribute an appropriate share of funding to ensure the establishment of National Preventive Mechanisms in all domestic jurisdictions and full implementation of the Optional Protocol to the Convention Against Torture in general.**
- **The Australian Government should provide increased and sustainable funding to the Office of the Commonwealth Ombudsman to perform its Commonwealth National Preventive Mechanism and national coordination functions.**

Access to healthcare systems

114. Individuals who are in custody (prison and youth detention) 'experience profound health disparities relative to those who have not been incarcerated, with a disproportionate burden of mental illness, chronic and communicable diseases'.⁸² According to the latest report produced by the Australian Institute of Health and Welfare (AIHW), around one in two prison entrants reported a chronic physical health condition, one in two prison entrants reported having been told they had a mental health condition, and around one in five prison entrants reported a history of self-harm.⁸³
115. Rule 24 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), to which Australia has committed, states:
1. *The provision of health care for prisoners is a State responsibility. Prisoners should enjoy the same standards of health care that are available in the community, and should have access to necessary health-care services free of charge without discrimination on the grounds of their legal status.*

⁸¹ Ombudsman's evidence to Senate Legal and Constitutional Affairs Legislation Committee, *Hansard*, 25 May 2023, at 95-100.

⁸² Tessa M Plueckhahn et al., '[Are some more equal than others? Challenging the basis for prisoners' exclusion from Medicare](#)' (2015) 203(9) *Medical Journal of Australia* 359.

⁸³ Australian Institute of Health and Welfare, [The health of people in Australia's prisons 2022](#) (Report, 15 November 2023) v-vi.

2. *Health-care services should be organized in close relationship to the general public health administration and in a way that ensures continuity of treatment and care, including for HIV, tuberculosis and other infectious diseases, as well as for drug dependence.*⁸⁴

116. However, despite the above commitments, individuals in custody in Australia are unable to access Medicare, with healthcare services in prisons funded by state and territory governments. The Law Council notes that the legal basis for detainees being excluded from Medicare is found in subsection 19(2) of the *Health Insurance Act 1973* (Cth) which provides that 'a medicare benefit is not payable in respect of a professional service that has been rendered by, or on behalf of, or under an arrangement with' any government entity (Commonwealth, state, territory, or any other authority established by federal, state or territory law), unless directed by the Minister.⁸⁵
117. As has been noted by the Australian Medical Association, this legislative provision is 'premised on the assumption that an equivalence of health service is being provided by jurisdictions in custodial settings'.⁸⁶ However, the current system has resulted in the provision of health services in prisons by state and territory governments, largely funded from limited justice budgets and often below a standard of equivalence with other Australians.
118. In its 2014 publication on *Prisoner health services in Australia*, the AIHW noted that 'the governance structures, funding arrangements and mechanisms for service delivery in Australian prisons are complex and variable, both among and within jurisdictions'.⁸⁷ The intricate nature of the health delivery systems in different states and territories is adversely impacting individuals who are in custody. For example, many may not have access to high-quality medications at a subsidised rate through the PBS.
119. The Law Council has long advocated for the Australian Government to ensure that detainees in each state and territory receive the same level of healthcare that members of the general public would receive under the public health system.⁸⁸ Individuals in custody should retain their entitlement to Medicare (both the MBS and the PBS) throughout their period of detention.
120. Inability to access adequate healthcare through Medicare while in custody can contribute to poorer health outcomes, spread of diseases, and deaths in custody.⁸⁹ It also means that individuals in custody are required to re-apply for Medicare upon release which creates a 'major barrier to health seeking, undermines information exchange between prison and community health services, and makes it more difficult to monitor and track the provision of health care within correctional settings'.⁹⁰

⁸⁴ *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*, GA Res 70/175, UN Doc A/RES/70/175 (adopted 17 December 2015) r 24.

⁸⁵ [Health Insurance Act 1973 \(Cth\)](#) s 19(2).

⁸⁶ Australian Medical Association, [Health Care in Custodial Settings](#) (2023) 4.

⁸⁷ Australian Institute of Health and Welfare, [Prisoner health services Australia](#), (Bulletin 123, August 2014) 17.

⁸⁸ Law Council of Australia, [Call to Parties: All Australians deserve access to justice](#) (2019), 15. The Law Council most recently reiterated this position in its submission to the Productivity Commission's Review of the National Agreement on Closing the Gap in 2023: Law Council of Australia, Submission to the Productivity Commission, [Draft Report – Review of the National Agreement on Closing the Gap](#) (27 October 2023) 19.

⁸⁹ Community Justice Coalition, [Medicare access for prisoners](#) (24 October 2022) 9.

⁹⁰ Australian Medical Association, [Position Statement on Health and Criminal Justice System](#), (2012) 5.

121. Improving health outcomes for individuals in custody and leaving custody, has the potential to reduce recidivism and lessen the strain on police, social services and the public health system that is caused by the acute care needs of former prisoners'.⁹¹

Recommendation:

- **The Australian Government should ensure, including through the provision of additional funding, that all individuals in custody in Australia are able to access Australia's healthcare services including the Medicare Benefits Scheme and the Pharmaceutical Benefits Scheme.**

Supporting access to legal information

Australasian Legal Information Institute (AustLII)

122. Access to justice requires access to the law and information about the legal system. AustLII provides Australians with access to legal information—including case law, legislation, and secondary materials such as journal articles—at no cost. This is a vital service, which underpins the rule of law and access to justice, serving all Australians. It ensures that, no matter the financial circumstances of a person, they can access a broad library of information about the laws to which they are bound.

123. AustLII relies on funding from individual donors and government bodies to maintain its viability. AustLII requires substantial additional Australian Government funding in order to continue and expand its valuable work, and ensure that it can operate sustainably for decades to come. This additional funding would support AustLII to improve its technical capability, adapt to the changing technological environment, and continue to meet the needs and expectations of its users.

Recommendation:

- **The Australian Government should provide substantial ongoing funding for the Australasian Legal Information Institute (AustLII) to support its provision of access to legal information at no cost.**

⁹¹ Damien Linnane, Donna McNamara and Lisa Toohey, '[Ensuring universal access: The case for Medicare in prison](#)' (2023) 48(2) *Alternative Law Journal* 109.

Developing and strengthening the legal profession in the Pacific region

Pacific Islands Legal Information Institute (PacLII)

124. PacLII is the principal source of legal information for 20 Pacific Island jurisdictions and is relied upon by the legal profession, judiciary, researchers and the broader community across the Pacific—including Australia and New Zealand.⁹² PacLII is administered by the University of the South Pacific, with extensive technical assistance from AustLII.
125. The Law Council considers PacLII as an essential piece of legal infrastructure that underpins the political, economic and social development of individual Pacific countries and the region as a whole. It is currently the only viable and credible model for the provision of free access to legal materials in the Pacific, due to the limited capacity of many Pacific jurisdictions to provide accessible and consolidated case law and legislation, as well as the prohibitive costs for practitioners to purchase legal materials from commercial providers.
126. The Law Council notes the commitment of the Australian Government to advancing an Indo-Pacific that is peaceful, stable, and prosperous, most recently in [Australia's International Development Policy](#) published by the Department of Foreign Affairs and Trade (DFAT) in August 2023.
127. The Australian Government provided financial support to PacLII until 2018. Between 2018 and 2022, funding for PacLII was principally provided by the Supreme and National Courts of Papua New Guinea; this funding was withdrawn in 2022.
128. DFAT provided critical gap funding for PacLII to continue its operations during the 2023–2024 financial year. This funding also enabled the [PacLII Summit on Maintaining and Enhancing Free Access to Law in the Pacific Region](#) to be held in Port Vila, Vanuatu on 5 September 2023.
129. The Law Council supports the application for core funding for PacLII over a period of five years, which was submitted to DFAT by the University of the South Pacific in November 2023.
130. Independent legal associations from across the Pacific—in Tuvalu, American Samoa, the Cook Islands, Fiji, the Marshall Islands, New Zealand, Samoa, the Solomon Islands, Tonga, and Vanuatu—have also emphasised the fundamental role of PacLII in promoting access to justice and the rule of the law in the Pacific and unanimously endorsed calls for the Australian Government to provide essential funding to PacLII.⁹³
131. The Law Council strongly encourages the Australian Government to continue to support PacLII's operations. It is an invaluable opportunity for the Australian Government to support the delivery of legal services and access to justice in Pacific jurisdictions and thereby promote good governance and the rule of law in the region.

⁹² PacLII has over 137,000 documents available online. In 2023, PacLII received 23.6 million hits from users.

⁹³ [Letter from South Pacific Lawyers' Association](#) to Penny Wong, Minister for Foreign Affairs, and Patrick Conroy, Minister for International Development and the Pacific, 5 December 2022.

Recommendation:

- **The Australian Government should approve PacLII’s five-year funding application to ensure its continued operation.**

Support for Independent Legal Professional Bodies in the South Pacific

132. Civil society organisations, including professional lawyers’ associations, are crucial to negotiating and shaping institutions in developing jurisdictions. They contribute to the ongoing processes of stable politics by representing interests, participating in consultative policy processes, and promoting the flow of information between government and the public.⁹⁴
133. Independent and self-governing legal professional associations are fundamental to the rule of law and the protection of human rights. They promote and defend the proper separation of powers (in particular, a strong and independent judiciary), monitor legislation and the exercise of executive power, and promote the development of effective, accountable and transparent institutions. They also cooperate with governments to promote effective and equal access to justice. These activities promote economic and social stability, good governance, and an effective justice system. In turn, economic and social stability and an effective justice system have the capacity to reduce the risk of military coups, undemocratic government, and susceptibility to foreign influence, all of which remain significant potential issues across the region.
134. In 2006, the Law Council initiated the establishment of the SPLA, a regional organisation comprised of legal professional associations and lawyers’ groups representing seventeen jurisdictions across the South Pacific.⁹⁵ SPLA works to support, develop, and strengthen law societies and bar associations in South Pacific jurisdictions, and provide South Pacific lawyers with continuing professional development (CPD) opportunities. The Law Council continues to serve as the SPLA Secretariat.
135. The Law Council has previously encouraged the Australian Government, under its International Development Policy, to expand partnerships with independent legal professional associations in the South Pacific region, and support their activities to improve access to justice, the delivery of quality legal services, good governance, and the development of effective, accountable and transparent justice institutions.⁹⁶ The Law Council would be pleased to assist the Australian Government’s Overseas Development Assistance Program as it relates to law and justice.
136. The Law Council also encourages the Australian Government to allocate funding to support SPLA’s existing initiatives to provide CPD opportunities for South Pacific lawyers, in particular Alternative Dispute Resolution training and CPD that aims to

⁹⁴ Adrian Leftwich, ‘[The political approach to law and justice sector](#)’ (2011) 13-14. See also, Office of Development Effectiveness, *Building on Local Strengths: Evaluation of Australian Law and Justice Assistance*, Canberra, December 2012.

⁹⁵ American Samoa, Australia, Cook Islands, Fiji, Kiribati, Marshall Islands, Nauru, New Zealand, Niue, Norfolk Island, Papua New Guinea, Samoa, Solomon Islands, Timor Leste, Tonga, Tuvalu and Vanuatu.

⁹⁶ Law Council of Australia, Submission to Department of Foreign Affairs and Trade, [Submission in relation to Australia’s New International Development Policy](#) (30 November 2022).

improve access to justice in Pacific jurisdictions and relieve severe case backlogs in under-resourced courts.

Recommendation:

- **The Australian Government should provide funding to strengthen and support the activities and development of legal professional associations in the South Pacific, including by working in collaboration with existing initiatives of the Law Council of Australia and the South Pacific Lawyers' Association.**
- **The Australian Government should provide funding for specialised training for legal practitioners in the South Pacific region to be delivered through the South Pacific Lawyers' Association.**