Media Release

Law Council
OF AUSTRALIA

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Law Council calls for Justice Impact Test on new laws

The Law Council of Australia is urging all governments to adequately assess and fund the downstream justice costs of new laws, policies and programs.

At this morning's Northern Territory Bar Association Civil Law Conference, the Law Council launched a Justice Impact Assessment Framework, which it will be recommending that Government Ministers, MPs, Senators and the public service utilise as the basis for undertaking a justice cost benefit analysis of planned policies, legislation and programs.

"We believe that good law-making in this country is being impeded by a failure to consider the clear consequences on the justice system of the proposed changes, in particular where a proposed measure will drive up demand on our courts and tribunals and people's need for legal assistance," Law Council of Australia President, Tania Wolff said.

"The introduction of new legislation, significant changes in policy or new government program settings can affect the rights, duties and legitimate expectations of Australians. The result is a rise in legal need and additional demands on the justice system.

"Changes in government policy as wide and far reaching as family, employment, social security, crime and immigration can all place additional pressures on our already-stretched justice services.

"Often it is Australians facing significant disadvantage who are most harshly affected. These changes can compound existing limitations on the availability of accessible and affordable legal representation, delays in resolution through our courts, increase the time people spend on remand, and lead to overcrowding and cost blow-outs in prisons and detention centres.

"For example, the 2023 amendments to the *Family Law Act 1975* (Cth) were intended to ensure that the voices of vulnerable children were better heard in family law proceedings. However, these amendments increased demands upon Independent Children's Lawyers without adequate funding being set aside to ensure that a sustainable workforce would be available to meet that demand."

These examples are also far too frequent in state and territory jurisdictions. For example, constant changes to tighten bail laws creates additional complexity and unfolding demands across legal assistance services, the courts, policing and corrections systems. There is often a gap in funding to ensure that all parts of the justice system can respond effectively.

"These issues could be prevented if, during the development phase, potential impacts are identified and addressed upfront and additional resourcing provided when required.

"Justice Impact tests are already used in other countries around the world including the United Kingdom," Ms Wolff said.

"And we have similar tools in Australia to evaluate environmental and red tape impacts. We strongly believe a Justice Impact test should equally be part of the legislative, policy and program development process.

"We want to see measures assessed against this checklist and if they are likely to impact the justice system, we would expect them to be accompanied by proportionate funding."

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The Law Council of Australia is the national voice of the legal profession, promoting justice and the rule of law