



The

LAWYER

PROJECT

REPORT

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Law Council
OF AUSTRALIA

Law Council of Australia

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Executive Summary

In a paper delivered to the 35th Australian Legal Convention in Sydney on 24 March 2007, then-Chief Justice of the Supreme Court of New South Wales (**NSW**), the Hon James Spigelman AC QC, highlighted the positive social, economic and political contribution made by the legal profession. However, his Honour also suggested that the profession as a whole has not properly, or with sufficient force, articulated to the broader community the scope and significance of that contribution.¹

The Law Council of Australia (**Law Council**) understands the vital role of the legal profession, and its contribution across many areas of society. As the peak body for the Australian legal profession, the Law Council appreciates the importance of identifying, and where possible, quantifying this contribution, to ensure it is well understood within the broader community.

The Lawyer Project draws on existing literature, analysis and case studies to illustrate the importance of the Australian legal profession and demonstrate, for the benefit of the Australian public, the often 'hidden' contribution that lawyers make to society through an economic, social and political lens.

In terms of its economic contribution, the legal sector – particularly in the corporate and commercial spheres – is a significant contributor to the Australian economy both in terms of employment and financial value, domestically and through trade. As set out in the Part 1 of this report, the legal profession's fundamental role in maintaining an effective legal system that promotes certainty and the rule of law is intrinsically linked to economic growth and confidence in key institutions.

Further, the proper administration of justice and downstream cost savings to the justice system (as well as other public expenses) are maximised when underpinned by a well-functioning legal profession. Lawyers play a critical role in facilitating access to justice for all members of the Australian community, particularly those who face economic or social disadvantage. The strength of Australia's pro bono and legal assistance sectors are central in this regard, as are specialist not-for-profit and charity lawyers. Similarly, the profession is innovative in enhancing access to justice. Traditional legal service provision models have adapted to changing needs and now offer discrete tranches of advice to self-represented litigants. Cross-disciplinary collaboration in early intervention services, health services and other support networks is also increasingly common.

The critical role of lawyers in defending rights and providing a voice to those who might otherwise not be heard is significant. For example, lawyers offer claimants in strategic litigation and class actions the tools to access justice and at times inspire positive change by using the law to respond to and rectify past wrongs. They apply the analysis and craft the arguments which lead to tangible social change, in areas such as native title, discrimination law and protecting public safety.

¹ Chief Justice James Spigelman, 'Access to Justice and Access to Lawyers' (Speech, 35th Australian Legal Convention Sydney, 24 March 2007) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1800402>. Note, the demographics of the profession have changed significantly since this speech.

As has been vividly illustrated over recent years, lawyers also play a unique role in times of crisis. They are a safety net in the face of uncertainty and loss, supporting individuals and organisations by advising on matters such as insurance, insolvency, industrial relations and accessing social services. In this regard, the legal profession, particularly through its frontline publicly funded services and outstanding commitment to pro bono from the private sector, has repeatedly responded to the call for assistance from communities that have been left devastated by disasters (whether natural or caused by human activity) and other crises.

Lawyers support the Australian community not only through practical advice on areas of law but also on the development of public policy. They assist systemic inquiries into key public policy issues and develop and scrutinise laws and regulations touching all communities and the natural environment. They also engage in advocacy for policy reform, especially in advancing the interests of those who are vulnerable, and ensure accountability and transparency.

Finally, lawyers make a significant contribution to Australian society and communities in less formalised, more hidden ways. Many are highly engaged in their local community organisations, often through memberships of committees, and conduct themselves personally and professionally so as to promote personal security and social order. In rural, regional and remote areas lawyers are frequently relied upon as generalist advisors, and lawyers including First Nations peoples are often a primary source of legal advice and advocacy for their local communities.

It is hoped that by exploring these many and varied contributions by the legal profession to the Australian economy, justice system, society and communities, this report will go some way to answering former Chief Justice Spigelman's call.

Introduction

As early as 1990, the United Nations Office of the High Commissioner for Human Rights (OHCHR) made the following statement as one of its *Basic Principles on the Role of Lawyers*:

Governments and professional associations of lawyers shall promote programmes to inform the public about their rights and duties under the law and the important role of lawyers in protecting their fundamental freedoms...²

In 2018, the Law Council's *Justice Project Final Report* emphasised the key role played by the legal profession in contributing to the social and economic health of Australia.³ The Law Council appreciates that there is further scope to promote a greater understanding of just how critical lawyers are to a well-functioning, prosperous society.

While some contributions by lawyers are more visible than others, it is difficult to avoid the conclusion that the influence of the legal profession permeates almost all aspects of life. The work of legal professionals underpins and supports sectors that most Australians interact with on a daily basis, including trade and commerce, civil society, family relations, public policy and the promotion of individual and collective rights.

For the purposes of this report, the legal profession is broadly understood to comprise those who practice law as a solicitor (whether employed by a firm, in-house⁴ or with government) and/or barrister. This is not to discount, however, the significant contribution which non-practising legally trained persons also make by using their legal skills in other contexts, from business to policy or government roles.

This report analyses the contributions of the legal profession across five categories, though it will be recognised that in practice, contributions in one category will often reinforce or enhance others.

The categories, which form the five parts of the report, are as follows:

- Part 1: Contribution to the Australian economy;
- Part 2: Contribution to the administration of justice;
- Part 3: Contribution in times of emergency;
- Part 4: Contribution to public policy; and
- Part 5: Social and community contribution.

² United Nations Human Rights Office of the High Commissioner, *Basic Principles on the Role of Lawyers* (Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba 27 August to 7 September 1990), Principle 4.

³ Law Council of Australia, *The Justice Project – Final Report* (August 2018) <<https://www.lawcouncil.asn.au/justice-project/final-report>>.

⁴ Note, an in-house lawyer is a lawyer employed by their client and frequently also its related bodies corporate: Law Society of New South Wales, 'Handy Hints...for In-house Lawyers' (2017) <<https://www.lawsociety.com.au/sites/default/files/2018-03/590200.pdf>> 2.



Some of these contributions can be quantified with a degree of accuracy. For example, the economic value of legal services, the levels of employment within the legal sector and the savings to the justice system through legal representation as opposed to self-representation, are areas that have been scrutinised and measured both in Australia and in comparable jurisdictions.

However, other contributions by lawyers are more difficult to measure, yet nevertheless deserving of acknowledgement. These include the role of the legal profession in promoting social cohesion, offering confidence and certainty to commercial transactions, developing public policy and law reform, and upholding the rule of law.

Similarly, the manner of contribution varies. For example, the way a sole practitioner makes an impact in a regional location differs significantly from that of a commercial lawyer in a national firm. A frontline worker in a community legal centre (**CLC**) makes a different social contribution to an in-house lawyer for a government department.⁵

In celebration of such rich contributions across diverse aspects of Australian life, this report draws on existing literature and research to explore the critical role of lawyers in generating social and economic benefits and otherwise enhancing Australian society, with a view to increasing public awareness.

⁵ Note, CLCs are not-for-profit organisations which are managed independently in communities and offer assistance to those experiencing disadvantage or who have special needs.

Part 1: Contribution to the Australian economy

The legal sector makes a significant contribution to the Australian economy through employment, the provision of legal services and the promotion of certainty and efficacy in trade, commerce, and financial transactions. This chapter highlights several existing studies and analyses which demonstrate the magnitude of the Australian legal sector's contribution to the economy.

Employment in the Australian legal sector

*The legal sector employs more than 100,000
persons in Australia*

The number of Australians employed in the legal sector is one important measure of the sector's contribution to the Australian economy and society.

References by most Australians to the 'legal profession' generally mean those who currently practice law as a solicitor and/or barrister (including in-house and government lawyers). These are typically the roles captured in head counts of the legal sector or legal profession.⁶

The scarcity of recent data makes it difficult to state definitively the number of people currently employed in the Australian legal sector, though various sources paint a broad picture. The Australian Bureau of Statistics (**ABS**) last released its *Legal Services* publication, which is based on a 'survey of businesses and organisations which were mainly engaged in providing legal services,' in 2009 (in relation to the 2007-08 financial year).⁷ According to this survey, at the end of June 2008, there were 15,326 businesses and organisations mainly engaged in the provision of legal services or legal support services.⁸ These businesses and organisations employed 99,696 persons.⁹

The ABS no longer conducts this survey. However, data on the size of the legal sector has been captured in other publications. For example, each year the ABS releases the *Australian Industry* report.¹⁰ In this publication the legal services 'industry' is included as part of the 'Professional, Scientific and Technical Services' (**PST**) classification. In the *Australian Industry* report for the 2015-16 financial year, the ABS included information specific to several industries making up this classification, including 'Legal Services'. According to this publication, as at 30 June 2016, 104,429 persons were employed in the legal services

⁶ Note, sometimes lawyers employed 'in-house' or in government are not included. Sometimes tangential professions such as conveyancers are included, as well as non-legal staff, or non-admitted staff with law degrees, working in legal organisations (such as clerks, paralegals and graduates); sometimes they are not.

⁷ Australian Bureau of Statistics, *Legal Services, Australia, 2007-08* (Catalogue No 8667.0, 24 June 2009) <<https://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/8667.02007-08?OpenDocument>>.

⁸ Ibid.

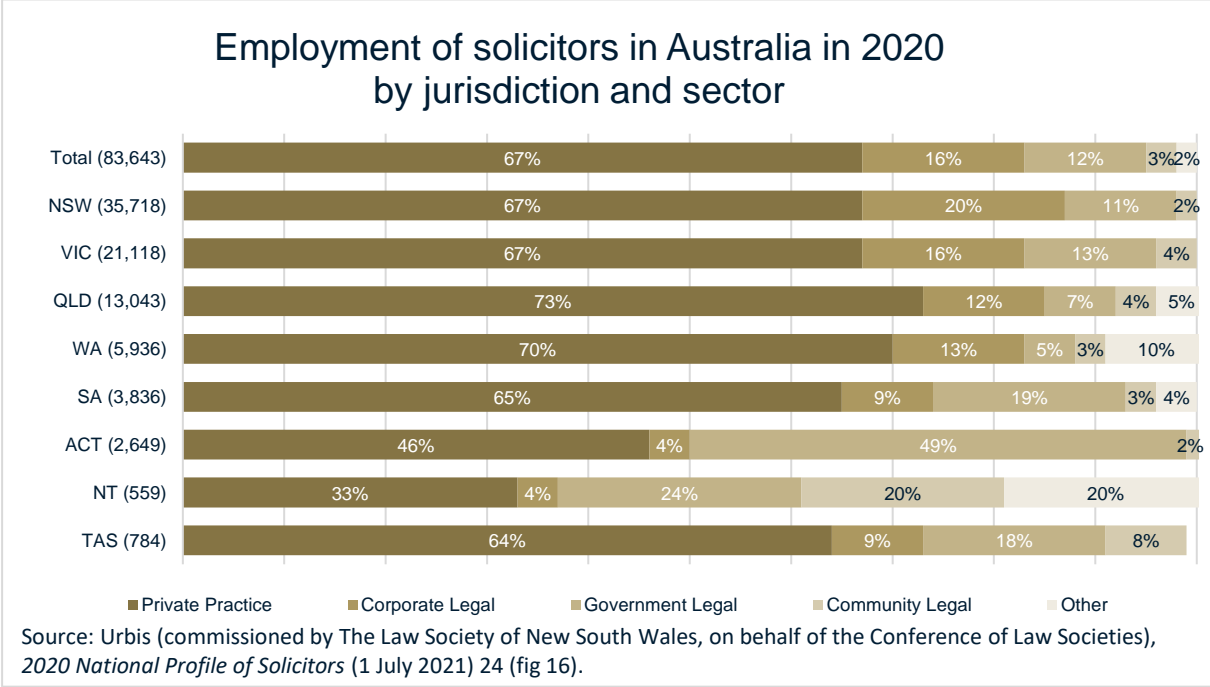
⁹ Ibid.

¹⁰ Australian Bureau of Statistics, *Australian Industry, 2015-16* (Catalogue No 8155.0, 26 May 2017) <<https://www.abs.gov.au/ausstats/abs@.nsf/Previousproducts/8155.0Main%20Features72015-16?opendocument&tabname=Summary&prodno=8155.0&issue=2015-16&num=&view=>>>.

sector.¹¹ At the time, this represented approximately 10.7 per cent of employment in the PST sector and approximately one per cent of the total Australian employed labour force.¹²

Another organisation which has captured more recent data on the size of the legal sector in Australia is IBISWorld. IBISWorld’s *Legal Services in Australia - Market Research Report*, updated in February 2021, estimates there to be 22,333 businesses in the legal services sector employing 100,674 persons.¹³ This same report calculates the total market size of the legal services sector to be approximately \$23 billion.

In 2020, the Law Society of NSW, on behalf of the Council of Australian Law Societies, re-engaged consultancy firm Urbis to update the ‘national profile’ of the solicitor component of the Australian legal profession. The *2020 National Profile of Solicitors* identified that as at October 2020, there were 83,643 practising solicitors in Australia – an increase of 7 per cent since 2016.¹⁴ The below table from the 2018 *National Profile of Solicitors* illustrates the breakdown of solicitors employed in the respective states and territories (revealing NSW, Victoria and Queensland as the highest employing jurisdictions) and sectors:



¹¹ Ibid.

¹² Ibid.

¹³ IBISWorld, *Legal Services in Australia - Market Research Report* (26 February 2021) <<https://www.ibisworld.com/au/industry/legal-services/560/>>.

¹⁴ Urbis (commissioned by The Law Society of New South Wales, on behalf of the Conference of Law Societies), *2020 National Profile of Solicitors* (1 July 2021) 24 <<https://www.lawsociety.com.au/advocacy-and-resources/gender-statistics/profiles-surveys-and-statistics>>.

Further, the Australian Bar Association represents approximately 6,000 barristers in Australia.¹⁵ Combining this information with the findings in the 2018 *National Profile of Solicitors*, it is estimated that the Australian legal profession comprises close to 90,000 practising solicitors and barristers.

In addition, the Australian Law Students' Association (**ALSA**) estimates that there are approximately 40,000 students in Australia's law schools.¹⁶ Media reports have suggested that there are as many as 15,000 law graduates each year.¹⁷ However, this figure is disputed by the Council of Australian Law Deans (**CALD**). A survey conducted by the CALD of the 39 law schools across Australia revealed that the total number of Australian law graduates entering the wider job market (not just the legal sector) in 2018 was 8,499, representing a 12 per cent increase from 2015.¹⁸

The Law Council notes that as the number of lawyers employed in Australia has increased with time, so too has the diversity of the individuals who make up the profession, meaning that it better reflects the community. For example, there has been an increase in the number of women lawyers (and, concurrently, in the variety of possible working arrangements) such that the majority of solicitors are now women.¹⁹ The proportion of solicitors aged under 25 years and over 65 years has also increased.²⁰ Further, a recent survey conducted by the Victorian Legal Services Board and Commissioner found that younger Victorian lawyers and law students 'are likely to be significantly more ethnically diverse than existing legal practitioners'.²¹ The importance of these changing demographics, and efforts to improve diversity in the profession,²² cannot be understated in terms of the profession's diversity, capacity to adapt and ability to maintain the trust and confidence of the community.

Finally, it is important to note that the statistics set out above largely pre-date the COVID-19 pandemic, which has had a well-recognised effect on employment throughout the Australian economy. It is not yet possible to determine the ongoing impact of the pandemic on employment in the legal services sector, however the size of the sector and the employment that the profession generates is such that it will remain a critical contributor to the economy.

¹⁵ Australian Bar Association, 'About Us' (Web Page) <<https://austbar.asn.au/about-the-aba/about-us>>.

¹⁶ Australian Law Students' Association, 'What is ALSA?' (Web Page) <<https://alsa.asn.au/about-alsa>>.

¹⁷ Michael McNamara 'University Legal Education and the Supply of Law Graduates: A Fresh Look at a Longstanding Issue' (2018) 20 *Flinders Law Journal* 223, 226-7.

¹⁸ Council of Australian Law Deans, *2018 Data Regarding Law School Graduate Numbers and Outcomes* (Fact Sheet, July 2019) <https://cald.asn.au/wp-content/uploads/2019/07/Updated-Factsheet-Law_Students_in_Australia-20-04-2019.pdf>.

¹⁹ Urbis (commissioned by The Law Society of New South Wales, on behalf of the Conference of Law Societies), *2020 National Profile of Solicitors* (1 July 2021) 2, 8-10 <<https://www.lawsociety.com.au/advocacy-and-resources/gender-statistics/profiles-surveys-and-statistics>>.

²⁰ *Ibid* 2. Note, this increase was reported to have taken place between 2011 and 2020.

²¹ Law Institute of Victoria, 'Report advocates for cultural diversity in the Victorian legal profession' (2 December 2020) <<https://www.liv.asn.au/Staying-Informed/Media-Releases/Media-Releases/December-2020/Report-advocates-for-cultural-diversity-in-the-Vic>>.

²² For example, the Law Council undertook a survey in 2013 to investigate and analyse the drivers for attrition of women from the legal profession in Australia. The resulting report made recommendations for legal associations and law practices, outlining practical measures which can be implemented to address the causes of high attrition rates among women lawyers, and to re-engage women lawyers who have left the profession: Urbis (commissioned by the Law Council of Australia), *National Attrition and Re-engagement Study (NARS) Report* (2014) <<https://www.lawcouncil.asn.au/docs/a8bae9a1-9830-e711-80d2-005056be66b1/NARS%20Report.pdf>>.

Direct contribution of the legal services sector to the economy

Legal services in Australia generate value in excess of \$13.5 billion to the economy

Legal sector contribution to the economy as a domestic product

As alluded to above, the ABS produces periodic statistical data on the economic contribution of the legal sector in Australia. According to its latest *Legal Services* publication, businesses and organisations that were mainly engaged in providing legal services generated income of \$18 billion during the 2007-08 financial year, incurred expenses of \$12.4 billion in the same period and contributed total 'industry value added'²³ (IVA) of \$10.9 billion to the Australian economy.²⁴

The *Legal Services* publication disaggregated its data by jurisdiction as well as type of lawyer, though did not do so for IVA. However, disaggregated profits give some indication of the share of IVA from each state and territory. For example, 'businesses' employing barristers had an estimated 'operating profit per barrister' of \$320,500 in Western Australia, \$280,400 in NSW, \$271,100 in Queensland, \$246,000 in Victoria, \$227,100 in Tasmania, \$185,800 in South Australia, \$159,900 in the Northern Territory and \$132,100 in the ACT.²⁵

More recently, the ABS' 2015-16 *Australian Industry* report identified that in the 2015-16 financial year, the legal service sector generated income of \$19.7 billion, incurred expenses of \$13.3 billion and provided an IVA of more than \$13.5 billion.²⁶ By way of comparison to similar industries, in 2015-16 the IVA of the 'accounting services' sector was \$13.5 billion, the IVA of the 'management advice and related consulting services' sector was \$14.6 billion and the IVA of the 'engineering design and engineering consulting services' sector was \$17.9 billion.

The *State of the Legal Market Report* released in 2020 by Thomson Reuters also identified the consistent strength in 'demand for legal services' (a proxy for measuring 'industry revenue') in recent years, noting that 'over the past five years, there have only been four quarters in total where demand contracted'.²⁷ While the 2021 *State of the Legal Market Report* highlights a softening of demand from previous years due to the COVID-19 pandemic, Thomson Reuters states that law firms have adapted their services to 'tap into nascent client needs in areas such as regulation and mergers & acquisitions where demand

²³ Note, this is the contribution by businesses in the industry to gross domestic product.

²⁴ Australian Bureau of Statistics, *Legal Services, Australia, 2007-08* (Catalogue No 8667.0, 24 June 2009) <<https://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/8667.02007-08?OpenDocument>>.

²⁵ Ibid 10.

²⁶ Australian Bureau of Statistics, *Australian Industry, 2015-16* (Catalogue No 8155.0, 26 May 2017) <<https://www.abs.gov.au/ausstats/abs@.nsf/Previousproducts/8155.0Main%20Features72015-16?opendocument&tabname=Summary&prodno=8155.0&issue=2015-16&num=&view=>>>.

²⁷ Thomson Reuters, *2020 Australia: State of the Legal Market Report* (August 2020) 5 <<https://insight.thomsonreuters.com.au/legal/resources/resource/2020-australia-state-of-the-legal-market>>.

has grown 14.8% and 9.4% respectively'.²⁸ Most recent Thomson Reuters figures demonstrate the resilience of the legal sector when presented with the challenges posed by COVID-19, noting that while revenue growth matched inflation in 2020/21, a reduction in expenses enacted by law firms because of the pandemic resulted in a growth in average profit as a percentage of revenue.²⁹

Looking offshore, extensive analysis has been undertaken in the United Kingdom (**UK**) in relation to the broad economic contribution of the legal services sector to the economy. In a report produced by KPMG for the Law Society of England and Wales (**LSEW**) entitled *Contribution of the UK legal services sector to the UK economy (KPMG/LSEW Report)* it is estimated that in 2018, the legal services sector contributed £59.93 billion 'gross value added' (**GVA**) to the UK economy, comprised of:

- £39.79 billion of direct GVA generated through the legal services sector's activities in the UK;
- £11.87 billion of indirect GVA generated through the legal services sector's UK supply chain; and
- £8.27 billion of induced GVA generated through the legal services sector's direct and indirect spending by employees of wages in the UK economy.³⁰

The LSEW's quantitative assessment of the economic contribution by the legal sector and its actors provides vital data for the experience in Australia, in the absence of equivalent research in this country. The KPMG/LSEW Report demonstrates that the legal sector in a comparable jurisdiction plays a pivotal role in the economic landscape, and that growth in legal services significantly contributes to the wider economy, boosting investment and employment.

Legal services sector contribution to the economy as an export/import

The *Trade in Services Australia 2018-19* report released by the Department of Foreign Affairs and Trade (**DFAT**) describes 'legal services' for the purpose of trade as including:

*... legal advisory and representation services in law, judicial and statutory procedures; drafting services of legal documentation and instruments; certification consultancy; auctioning services and escrow and settlement services.*³¹

²⁸ Thomson Reuters, *2021 Australia: State of the Legal Market* (August 2021) <<https://insight.thomsonreuters.com.au/legal/resources/resource/2021-australia-state-of-the-legal-market-report>>.

²⁹ Thomson Reuters, *2021 Australia: State of the Legal Market, Climbing Through the Storm* (Infographic) <http://images.connect.thomsonreuters.com.au/Web/TRLegalAU/%7B197acfc8-4848-4f9b-9d3a-ecd755d3f6d4%7D_2021_AU_SOLM_Infographic_final.jpg>

³⁰ KPMG (commissioned by the Law Society of England and Wales), *Contribution of the UK legal services sector to the UK economy* (Report, January 2020) <<https://www.lawsociety.org.uk/topics/research/contribution-of-the-uk-legal-services-sector-to-the-uk-economy-report>>.

³¹ Department of Foreign Affairs and Trade, *Trade in Services Australia 2018-19* (April 2020) 152 <<https://www.dfat.gov.au/sites/default/files/trade-in-services-australia-2018-19.pdf>>.

Legal services as an export may be provided by Australian law firms establishing a commercial presence in an overseas market, lawyers engaging in short-term 'fly-in, fly-out' assignments, or online cross-border services.³² The *Trade in Services Australia 2018-19* report notes that in 2018-19, Australia exported legal services to the value of \$974 million.³³

During the same period Australia imported \$307 million in legal services. As such, Australia's trade balance in relation to legal services in 2018-19 was \$667 million.³⁴

Significant trade surplus is a result of a high demand for Australian legal services, particularly in the Asia-Pacific region. This demand reflects the high level of respect globally for the Australian legal profession and the services provided by the Australian legal services sector.

However, these measures of exports and imports are likely to underestimate the true contribution of the legal services sector to Australia's balance of payments. As noted in the KPMG/LSEW Report in relation to the export and import of UK legal services, its analysis probably underestimated the legal sector's contribution to the balance of payments by not taking into account major exporters which are reliant on legal services, such as the financial services sector.³⁵

Further, as the Law Council has previously noted, the availability of legal services across jurisdictions facilitates and encourages trade and investment throughout the entire economy. For example, lawyers help to establish trade and investment by:

- advising clients about cross-border business opportunities and legal issues;
- reducing investment risk, for example by providing effective contracts; and
- delivering remedies should things go wrong.³⁶

Indeed, the literature strongly supports the hypothesis that 'the type' of a country's legal system is 'an important factor' in encouraging Foreign Direct Investment (FDI) in that country.³⁷ Although Hoon Lee et al considered developing countries specifically, their finding that a 'strong and independent judicial system' and 'adherence to the rule of law' are key to attracting FDI would likely also extend to the case of developed countries such as Australia.³⁸ The sample size of 114 countries which the authors considered makes their study particularly authoritative.³⁹

³² World Trade Organization (Council for Trade in Services), *Communication from Australia* (27 March 2001), available as an attachment to the Law Council of Australia's submission to the Productivity Commission's review of Barriers to Growth in Services Exports <<https://www.lawcouncil.asn.au/publicassets/f4d8855b-e1d6-e611-80d2-005056be66b1/150922-Submission-3058-draft-report-barriers-growth-services-exports.pdf>>.

³³ Department of Foreign Affairs and Trade, *Trade in Services Australia 2018-19* (April 2020) 152 <<https://www.dfat.gov.au/sites/default/files/trade-in-services-australia-2018-19.pdf>>.

³⁴ Ibid.

³⁵ KPMG (commissioned by the Law Society of England and Wales), *Contribution of the UK legal services sector to the UK economy* (Report, January 2020) 37 <<https://www.lawsociety.org.uk/topics/research/contribution-of-the-uk-legal-services-sector-to-the-uk-economy-report>>.

³⁶ Law Council of Australia, *Trade in Legal Services under an Australia-European Union Free Trade Agreement* (September 2015) <<https://www.lawcouncil.asn.au/resources/submissions/trade-in-legal-services-under-an-australia-european-union-free-trade-agreement>>.

³⁷ Hoon Lee, Glen Biglaiser and Joseph L Staats, 'Legal System Pathways to Foreign Direct Investment in the Developing World' (2014) 10 *Foreign Policy Analysis* 393.

³⁸ Ibid 394.

³⁹ Ibid 394.



Nathan Jensen further notes that ‘the constraints placed on executives in democratic regimes’ are the reason that multinational corporations are faced with ‘lower levels of risk’ when operating in democratic countries.⁴⁰ As the Australian Law Reform Commission (**ALRC**) explains, Australia’s constitutional doctrine of the separation of powers distinguishes between the distinct role of parliaments (which make laws), the executive (which administers and enforces them) and the judiciary (which adjudicates disputes which may arise).⁴¹ Legislative power is constrained by guidance and scrutiny at the policy-making and legislative drafting level,⁴² government power is constrained by the common law right to judicial review⁴³ and, as the Rule of Law Education Centre states, the judicial system is ‘independent, impartial, open and transparent’.⁴⁴

Without lawyers to interpret and advise on the legal implications of a certain policy or piece of legislation, a particular action for judicial review or the need for an open and impartial judicial system, none of the elements of the rule of law could properly operate and the reduced risk for multinational corporations, as highlighted by Jensen, would not exist. The rule of law has broader importance too, as is explored in further detail throughout this report.

⁴⁰ Nathan Jensen, ‘Political Risk, Democratic Institutions, and Foreign Direct Investment’ (2008) 70(4) *The Journal of Politics* 1040.

⁴¹ Australian Law Reform Commission, ‘Traditional Rights and Freedoms—Encroachments by Commonwealth Laws (ALRC Interim Report 127)’ (31 July 2015) <<https://www.alrc.gov.au/publication/traditional-rights-and-freedoms-encroachments-by-commonwealth-laws-alrc-interim-report-127/16-delegating-legislative-power/the-separation-of-powers/>>.

⁴² *Ibid* [2.6]-[2.70].

⁴³ *Ibid* [18.1]-[18.6].

⁴⁴ Rule of Law Education Centre, ‘Principles’ (Web page) <<https://www.ruleoflaw.org.au/principles/>>.

The importance of the ‘institution’ of the legal system and its participants to economic strength and growth

An effective legal system is intrinsically linked to economic growth

The legal system and economic growth

The legal sector also plays a broader (if not always tangible) role in the economic strength and growth of Australia’s economy. Different schools of thought in academia and the legal profession have long debated the interaction between law and economics.⁴⁵ However, at their core law and economics share the fundamental assumption that ‘[e]very individual and corporate action has economic implications’.⁴⁶ As Heather Newton notes, part of the economic analysis of law looks to ‘the economic implications’ of people’s response to legal rules.⁴⁷

Economic value of different areas of law

Newton observes that the study of the economic effects of regulating ‘non-market activities’ like law enforcement is ‘a relatively new phenomenon’.⁴⁸ Newton also makes the following high-level assessments of value for various areas of law in the US with comparable counterparts in Australia.⁴⁹

⁴⁵ Judge Jack Goldring, ‘Australian Lawyers and Social Change – 30 Years Later’ (Speech, Australian Lawyers and Social Change Conference, Australian National University, September 2004)

<https://law.anu.edu.au/sites/all/files/media/documents/events/goldring_-_30_years_later.pdf>; Heather Newton, ‘Economic Analysis of Law – Research Starters business’ (January 2018) Great Neck Publishing.

⁴⁶ Heather Newton, ‘Economic Analysis of Law – Research Starters business’ (January 2018) Great Neck Publishing.

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ Ibid.

Area of law	Economic value
Torts	<ul style="list-style-type: none"> • Costs of accidents (from unintentional torts) are minimised through allocation of the costs of injury to the persons in the best position to avoid or minimise the losses. • Victims (of intentional torts) are compensated and retribution or punishment falls upon the wrongdoer.
Contracts	<ul style="list-style-type: none"> • Voluntary transactions of property rights are facilitated. • Goods and services move into the hands of those who value them the most.
Property	<ul style="list-style-type: none"> • Rights to the exclusive use of valuable resources are created and defined.
Competition	<ul style="list-style-type: none"> • Free and open competition is protected. • Consumers benefit through lower prices and new and better products.
Intellectual property	<ul style="list-style-type: none"> • Intellectual property is protected. • The economic advantage in inventing and creating new technologies and ways of doing business is ensured. • Innovation, a powerful force in determining how fast an economy's productivity and output rises, is enhanced.
Financial markets	<ul style="list-style-type: none"> • Investor confidence in the fairness of financial markets is enhanced. • Significant impacts result regarding the amount of capital available for businesses to use, given that capital flows into financial markets that the public perceive as basically fair.
Equality	<ul style="list-style-type: none"> • The social and economic interests of individuals who have neither the education nor the resources to maximise their own wealth or to protect themselves from the unethical behaviour of others are protected.
Law enforcement	<ul style="list-style-type: none"> • Effective law enforcement activities ensure: <ul style="list-style-type: none"> - valuable resources are not wasted without minimising criminal activity; and - the risk of retributive criminal behaviour is minimised.

Echoing this analysis, the Organisation for Economic Co-operation and Development (OECD) and World Justice Project (WJP) point out that in order to provide 'economic agents' with incentives to invest in education and property, it is necessary for a community to have 'well-defined property rights' which the legal system enforces 'effectively'.⁵⁰ Similarly, Antonia Stolper et al have highlighted the importance of the rule of law in promoting confidence amongst entrepreneurs and small business owners.⁵¹

This is reinforced by anecdotal evidence of the critical part which the legal sector plays in the infrastructure that underpins transactions in the commercial world. Corporate lawyers, for example, often play an informal role as intermediaries and facilitators to transactions, not simply advising on questions of law but also identifying potential deals and connecting willing parties to make them happen. This highlights the unique position which lawyers often occupy as trusted, specialised advisors within a sector of expertise, frequently by maintaining established and well-recognised relationships with their clients.

Similarly, while their value may be more difficult to quantify than that of lawyers in the legal assistance sector, in-house and government lawyers are also widely acknowledged as an important and valued part of the profession.⁵² They provide significant benefits by undertaking diverse functions and advising their organisations or departments, often at the early stage of decision making.

Economic value of the legal system as a whole

More broadly, Anthony Ogus emphasises the importance of legal systems for economic growth and argues that 'legal infrastructure is connected to economic growth'.⁵³ While Ogus concedes that the 'causality' of this connection may be difficult to prove, what is key for economic growth is the foundations of the legal system and the rule of law.⁵⁴

Based upon research conducted in the UK in 2016 (and updated in 2020), the KPMG/LSEW Report identified that in addition to the direct economic value of the legal sector, the legal profession has a wider impact on economic strength and growth by 'enabling a well-functioning economy and the wider socio-economic value that is generated from this'.⁵⁵ The KPMG/LSEW Report noted that the frameworks of laws, regulations and their development

⁵⁰ Organisation for Economic Co-operation and World Justice Project, *Building a Business Case for Access to Justice* (OECD White Paper) 7 <<https://www.oecd.org/gov/building-a-business-case-for-access-to-justice.pdf>>.

⁵¹ Antonia Stolper et al, 'Rule of Law, Economic Growth and Prosperity' (July 2007) *Americas Society and Council of the Americas Working Group* <<https://www.as-coa.org/sites/default/files/Rule%20of%20Law.pdf>>.

⁵² See, for example, Chris Moraitis PSM, 'Secretary's Review of Commonwealth Legal Services' *Attorney-General's Department* (Report, 2016); Association of Corporate Counsel, 'Guide to the ACC Value Challenge in Australia • How to Get Better Value from External and Internal Resources' (2016) <<https://www.acc.com/sites/default/files/2019-04/Guide-to-the-Australia-How-to-Get-Better-Value-From-External-and-Internal-Resources.pdf>> 6.

⁵³ Anthony Ogus, 'The Importance of Legal Infrastructure for Regulation (and Deregulation) in Developing Countries' (Working Paper No 65, Centre on Regulation and Competition, June 2004) 8 <<https://assets.publishing.service.gov.uk/media/57a08cbced915d622c001535/CRCwp65.pdf>>.

⁵⁴ *Ibid.*

⁵⁵ KPMG (commissioned by the Law Society of England and Wales), *Contribution of the UK legal services sector to the UK economy* (Report, January 2020) 43 <<https://www.lawsociety.org.uk/topics/research/contribution-of-the-uk-legal-services-sector-to-the-uk-economy-report>>.

and enforcement by lawyers play an enabling role, facilitating the operation of key sectors and the smooth functioning of the economy.⁵⁶

In two separate reports for the Regulatory Policy Institute,⁵⁷ Professor George Yarrow and Dr Christopher Decker explained this in more detail. The authors noted that, while legal services often have ‘high importance’ for individual client, they ‘are also part of the broader social-political-moral landscape that comprises a society’s legal system, or ‘The Law’’.⁵⁸ The authors argued that if such services are provided improperly, there is great ‘potential magnitude of...adverse effects’.⁵⁹ Further, legal services are necessary for a ‘stable, authoritative, broader legal system’.⁶⁰ This, they argue, attaches ‘a special complexion to legal services, as compared with other professional services’.⁶¹

Yarrow and Dekker have also noted that ‘stable and well-functioning legal systems...condition and determine economic performance’, with ‘stable and credible’ legal systems resulting in greater economic activity.⁶² Critically, the legal system and its laws are influenced not only by political institutions and the judiciary but by the active contribution, ‘through their everyday actions and conduct’, of lawyers.⁶³

It is clear from this discussion that lawyers play a key role in the smooth operation of the economy in a free market country. This may be in general terms by promoting the rule of law or, more specifically, by working in a system which:

- addresses the ‘negative externalities’ of antisocial behaviours by imposing a cost on those behaviours through criminal and torts law;
- facilitates the identification and transfer of property rights through contract and property law; and
- administers protections for intellectual property to promote investment, innovation and, indirectly, productivity and output.

⁵⁶ Ibid 47.

⁵⁷ Note, this is a UK-based not-for-profit.

⁵⁸ Regulatory Policy Institute (authored by Dr Christopher Decker and Professor George Yarrow), *Understanding the economic rationale for legal services regulation* (31 October 2010) <https://www.legalservicesboard.org.uk/Projects/rationalising_scope_of_regulation/pdf/economic_rationale_for_Legal_Services_Regulation_Final.pdf>.

⁵⁹ Ibid.

⁶⁰ Ibid.

⁶¹ Ibid.

⁶² Regulatory Policy Institute (authored by Dr Christopher Decker and Professor George Yarrow), *Assessing the economic significance of the professional legal services sector in the European Union* (2012) <https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/FREE_MOVEMENT_OF_LAWYERS/FML_Reports___studies/EN_FML_20120926_Assessing_the_economic_significance_of_the_professional_legal_services_sector_in_the_European_Union.pdf>.

⁶³ Ibid.



The economic value of timely commercial advice

Properly governed and legally compliant businesses play a significant role in promoting public trust and confidence in major institutions, and the legal profession has an important role in promoting these corporate behaviours.

The legal profession is integral to the facilitation of trade and commerce and promoting good governance through effective commercial and corporate support. For example, Scott Butler is a commercial dispute resolution lawyer with a broad practice working with clients, company directors, and advisers in a range of sectors. Scott also volunteers in his spare time as the Chair of the Law Council's Insolvency & Restructuring Committee, which forms part of the Business Law Section.

Scott's clients benefit greatly from advice in relation to their structure, ongoing fiscal viability, and legal obligations on directors – however the downstream effects of this advice are even more significant. A legally compliant, well-structured and properly governed business provides clear benefits to the Australian economy and key corporate stakeholders including creditors, shareholders, staff and consumers.

For example, Directors of an Australian company may have concerns with the organisation's ongoing solvency and seek legal advice on how they can comply with their legislative obligations while maintaining operations and ensuring that staff entitlements are protected. Through the support of a lawyer such as Scott, Directors have access to advice and guidance that can empower them to make decisions in difficult circumstances that can address problems before they are exacerbated.

Importantly, Scott emphasises that it is just as critical that businesses have access to advice during challenging times, and know when and how to wind-up operations if the need arises. Without proper advice at this critical juncture, businesses risk disrupting the flow of capital by incurring debts to creditors, employees may lose entitlements, and directors may be in breach of their obligations owed to the company. The availability of sound legal advice at this time has the potential to mitigate the adverse impact on the business and its stakeholders, with flow-on benefits to the broader Australian economy.



The cost of justice not being provided

Several studies and reports have evaluated the economic contribution of certain sectors of the legal system for the purpose of advocating the importance of publicly funded legal services. This underscores the economic contribution of Australia's legal system by highlighting the importance of access by all to that system (in other words, access to justice).

The methodology commonly used when compiling such studies is to calculate the costs which would arise, including in the provision of other public services such as the health, child protection and criminal justice systems, if certain aspects of the legal system did not operate or were not accessible to all potential users. Naturally, this body of literature focuses on the value of legal services in jurisdictions in which legal aid is typically sought – namely, the civil and criminal jurisdictions.

In a 2019 study, the World Bank and International Bar Association (**IBA**) considered surveys of 50 cost/benefit analyses conducted in a variety of legal systems worldwide to conclude that: 'analyses from around the world suggest that the benefits of legal aid and related services significantly outweigh their costs'.⁶⁴ These studies found 'overwhelmingly' that 'the benefits of legal aid outweigh the costs: for the individual involved, the community, the justice sector, as well as the economy and the society'.⁶⁵

The World Bank and IBA also concluded that if legal problems are unresolved, their costs 'shift to other areas of government spending such as health care, housing, child protection, and incarceration'.⁶⁶ They cited a Canadian study which estimated that the 'cascading costs' of 'unequal access to justice' were 2.35 times those of direct spending on legal aid services, impacting upon services including employment insurance and health care.⁶⁷ They described economic costs, from direct 'monetary losses' like lost property or medical costs, to less quantifiable 'socioeconomic costs' like 'damaged reputation' and 'reduced life chances'.⁶⁸

The OECD and WJP have also found that the provision of legal assistance to victims of violence can reduce the prevalence of domestic violence 'and the associated costs'.⁶⁹ They concluded that legal assistance is used by 'a growing number of countries' as part of the support program for victims of crime. This 'improv[es] their health, social and employment outcomes, especially when the victims belong to vulnerable segments of the population'.⁷⁰ These benefits also have clear consequences for the ability of individuals to contribute to the economy.

⁶⁴ International Bar Association and World Bank Group, *A Tool for Justice: A Cost Benefit Analysis of Legal Aid* (2019) 2 <<https://www.ibanet.org/Document/Default.aspx?DocumentUid=DB027287-2352-4269-8D0F-C1446B1023BC>>.

⁶⁵ Ibid 8.

⁶⁶ Ibid 9.

⁶⁷ Ibid 8.

⁶⁸ Ibid 9.

⁶⁹ Organisation for Economic Co-operation and World Justice Project, *Building a Business Case for Access to Justice* (OECD White Paper) 43 <<https://www.oecd.org/gov/building-a-business-case-for-access-to-justice.pdf>>.

⁷⁰ Ibid.

Australian experience

As noted earlier, former Chief Justice Spigelman has considered the economic contribution of Australia's lawyers specifically.⁷¹ The former Chief Justice described the contribution as 'intangible, as most contributions are in a service economy'.⁷² However, his Honour observed that 'economic prosperity' is enhanced both indirectly (in 'the maintenance of freedoms and the maintenance of a sense of fairness in our society') and directly (in relation to 'economic transactions').⁷³ These comments drew upon the earlier assertion that '[m]ore than anything else, a successful market economy is the product of good government and of the law'.⁷⁴

Justice Jack Goldring made a more detailed assessment of the contribution of lawyers in Australian jurisdictions. In respect to 'the enforcement of competition policy,' for example, his Honour cited the importance of 'law and lawyers'.⁷⁵ Similarly, he noted that lawyers are 'intricately involved' in resolving commercial disputes and 'increasingly, in planning commercial activities'.⁷⁶

As outlined above, an extensive body of literature has also engaged in at least a partial assessment of the economic contribution of the Australian legal system, by assessing the costs of not adequately funding its legal assistance sector. In 2018, the Law Council's *Justice Project Final Report* made the business and social case for funding legal assistance services specifically, and access to justice programs generally.⁷⁷ Similar arguments have been made by organisations such as the Productivity Commission and National Legal Aid (NLA).

In its *Access to Justice Arrangements* report, the Productivity Commission cited the following observation by then-Chief Justice of the High Court of Australia, the Hon Murray Gleeson AC QC:

*...What is not so obvious, and not so easily measurable, but what is real and substantial, is the cost of the delay, disruption and inefficiency, which results from absence or denial of legal representation. Much of that cost is also borne, directly or indirectly, by governments. Providing legal aid is costly. So is not providing legal aid.*⁷⁸

Similarly, NLA found in its report, *Economic value of legal aid*, that 'a considerable benefit from legal aid' lies in the avoided costs to the justice system. While costs savings resulting

⁷¹ Chief Justice James Spigelman, 'Access to Justice and Access to Lawyers' (Speech, 35th Australian Legal Convention Sydney, 24 March 2007) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1800402>.

⁷² Ibid 17.

⁷³ Ibid 5.

⁷⁴ Chief Justice James Spigelman AC, 'Economic Rationalism and the Law' (2001) 24(1) *University of New South Wales Law Journal* 200 <www.austlii.edu.au/au/journals/UNSWLJ/2001/19.html>.

⁷⁵ Judge Jack Goldring, 'Australian Lawyers and Social Change – 30 Years Later' (Speech, Australian Lawyers and Social Change Conference, September 2004) 2 <https://law.anu.edu.au/sites/all/files/media/documents/events/goldring_-_30_years_later.pdf>.

⁷⁶ Ibid 8.

⁷⁷ See, Law Council of Australia, *The Justice Project: Final Report – Introduction and Overview* (August 2018) 15 <<https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Finwal%20Report/Introduction%20and%20Overview.pdf>>.

⁷⁸ Productivity Commission, *Access to Justice Arrangements* (Inquiry Report No 72, 2014) 30-1 <<https://www.pc.gov.au/inquiries/completed/access-justice/report/access-justice-volume1.pdf>>, citing Chief Justice Murray Gleeson, 'State of Judicature' (Speech, Australian Legal Convention, 10 October 1999).

from the provision of legal aid in court can be measured, it is more difficult to assess the impacts of education, advice and information services provided by NLA. However, NLA argued that the latter services can also be 'assumed [to]...have significant net benefits to the justice system', as they stop matters escalating through the system unnecessarily.⁷⁹

The *Justice Project Final Report* also found that across multiple contexts and sections of the Australian community, research findings and case studies reinforce the personal, community, social and economic costs that arise when people cannot access justice. These include:

- a greater likelihood of incarceration, including in circumstances in which charges and arrest were unwarranted;
- family violence victims being evicted for reasons which are not their fault, such as damage to the rental home by the perpetrator;
- an inability to resolve mounting debts, fines or payments, resulting in poverty and/or eviction and homelessness, as well as deteriorating mental and physical health, and in some jurisdictions, imprisonment;
- an inability to access a person's entitlements, such as unpaid wages, income support or a pension, resulting in destitution;
- an inability to seek redress as a victim of crime, to address workplace exploitation or discrimination;
- people remaining at risk of harm, violence and exploitation – such as family violence victims, elder abuse victims, people with disability who are abused by carers, and people who are trafficked or subject to forced marriages;
- families being split when children are unnecessarily removed from their parents;
- a greater likelihood of people being returned to their countries of origin to face persecution, torture or death; and
- unresolved problems escalating from civil, to family, to criminal matters.⁸⁰

The *Justice Project Final Report* concluded that these scenarios clearly have broader cost implications – such as to health, housing, social services and welfare, child protection, families, corrections, policing and justice portfolios.⁸¹ As such, the upfront cost of investment in the key services necessary to ensure access to justice is properly assessed in the wider context of their potential to reduce other community costs.⁸²

⁷⁹ PriceWaterhouseCoopers (commissioned by National Legal Aid), *Economic value of legal aid: Analysis in relation to Commonwealth funded matters with a focus on family law* (Report, 2009) v <http://legalaidact.org.au/sites/default/files/files/publications/economic_value_of_legalaid.pdf>.

⁸⁰ Law Council of Australia, *The Justice Project: Final Report – Introduction and Overview* (August 2018) 18 <<https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Finwal%20Report/Introduction%20and%20Overview.pdf>>.

⁸¹ Ibid.

⁸² Ibid 19. Note, the Justice Project Final Report enumerated such reducible community costs.

Part 2: Contribution to the administration of justice

John Curtin, former president of the American Bar Association (**ABA**), has stated that '[l]awyers are the simple yet essential means by which people seek to vindicate their rights and we must not foreclose that means'.⁸³

The legal profession plays a vital role in upholding the rule of law in Australia and, in turn, promoting an equitable and just society. As former Chief Justice of Victoria the Hon Marilyn Warren AC QC has noted:

*Providing advice on contracts, mergers and acquisitions, banking, taxation and all the rest, the assessment of discovery, the traipsing to court to examine files and subpoenaed documents are all about rules. They are the rules that control the disputes between citizens and the citizen and government. If there were no rules and the lawyers did not apply them, we would not have a peaceful, organised and lawful society. Without the rules we would not have the rule of law. So, while lawyers mostly do not heal the sick or save lives, they are pivotal to our society, to our democratic system.*⁸⁴

The literature on this subject is extensive and highlights both the integral role of lawyers in a well-functioning legal system (and, by extension, society), and their importance in defending rights and facilitating access to the law.

A well-functioning legal system, a well-functioning society

Through its integral role in the administration of justice, the legal profession is vital to the health of Australian society

There is general consensus in the literature, at least regarding Western liberal democracies comparable to Australia, that a well-functioning legal system is vital to a healthy society. Similarly, it is recognised that a variety of factors can be used to measure what makes a legal system 'well-functioning' and what makes a society 'healthy'.

The ABA includes in its *Model Rules of Professional Conduct* the statement that 'as a member of the legal profession, [a lawyer] is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice'.⁸⁵ As such, the ABA goes on to state that '[l]awyers play a vital role in the preservation of society'.⁸⁶

⁸³ Thomas F Burke, *Lawyers, Lawsuits and Legal Rights* (University of California Press, 2002) 24.

⁸⁴ Chief Justice Marilyn Warren, 'The Access to Justice Imperative: Rights, Rationalisation or Resolution?' (Speech, Eleventh Fiat Justitia Lecture, 25 March 2014) <<http://classic.austlii.edu.au/au/journals/VicJSchol/2014/6.pdf>>.

⁸⁵ American Bar Association, 'Model Rules of Professional Conduct: Preamble & Scope' <https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_preamble_scope/>.

⁸⁶ *Ibid.*

Fred Zacharias evaluates the impact of lawyers on society more specifically, namely in terms of 'contemporary democracy' and by comparison with the impact of other professionals.⁸⁷ He notes that lawyers are the 'mechanics' of the legal system and the experts on its workings.⁸⁸ He then posits that the rule of law may be 'a necessary condition of sound democracy' and that, in part because lawyers have a 'monopoly' on ensuring access to the rule of law, there may be 'some expectation that they will function as [its] advocates'.⁸⁹ Whether or not lawyers will do so, or will contribute to democracy, 'will stem from lawyers' individual moral decisions to act'.⁹⁰

Practising advocates share this view. Andrew Walker QC, then Chair of the Bar of England and Wales, highlighted in 2018 the crucial importance of a 'strong and independent legal profession' for the rule of law.⁹¹ Walker observed that in the UK, the independence of the profession had been critical to the recent uncovering of issues with disclosure by the prosecution in criminal trials and so to the avoidance of 'miscarriages of justice'.⁹²

Australian experience

Commentary in Australia echoes these key themes. For example, former Chief Justice Spigelman is a champion of the part that lawyers play in the 'invisible...social infrastructure' of the laws and mechanisms which both apply and enforce 'most everyday activities in which [Australians] engage'.⁹³ This infrastructure is intimately connected to 'the sense of personal security and the existence of social order'.⁹⁴ Social order is, in its turn, 'a state of certainty' requiring the ability to resolve conflicts fairly.⁹⁵ The product of social order is 'a high level of predictability...and the confidence to act in accordance with reasonable beliefs as to one's rights and obligations and that reasonable expectations will be met'.⁹⁶

Former Chief Justice Spigelman explains that the administration of justice is 'a core function of government' rather than any 'service' in the economic sense.⁹⁷ This is because parties to a litigious matter are seeking to assert their rights as citizens, rather than to enact a choice as consumers. Similarly, the courts uphold public purposes in enforcing legal rights and obligations, identifying how the law has developed, resolving private disputes, and denouncing and deterring certain conduct.⁹⁸

⁸⁷ Fred C Zacharias, 'The Lawyer's Role in a Contemporary Democracy, Promoting Social Change and Political Values, True Confessions About the Role of Lawyers in a Democracy' (2009) 77(4) *Fordham Law Review* 1591, 1594 <<https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=4422&context=flr>>.

⁸⁸ Ibid 1604.

⁸⁹ Ibid 1607.

⁹⁰ Ibid 1607.

⁹¹ Andrew Walker, 'The value of a strong and independent legal profession' *Counsel* (online, 20 February 2018) <<https://www.counselmagazine.co.uk/articles/the-value-of-strong-and-independent-legal-profession>>.

⁹² Ibid.

⁹³ Chief Justice James Spigelman, 'Access to Justice and Access to Lawyers' (Speech, 35th Australian Legal Convention Sydney, 24 March 2007) 7-8 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1800402>.

⁹⁴ Ibid 10.

⁹⁵ Ibid 13.

⁹⁶ Ibid 14.

⁹⁷ Chief Justice James Spigelman AC, 'Economic Rationalism and the Law' (2001) 24(1) *University of New South Wales Law Journal* 200, 204 <www.austlii.edu.au/au/journals/UNSWLJ/2001/19.html>.

⁹⁸ Ibid.



Judge Jack Goldring uses the language of society to express a similar idea, asserting that law serves as ‘an influence on and an instrument of social policy’ which thereby shapes society itself.⁹⁹ This statement, when read against recent public acknowledgements of the potential for loss of trust when the highest standards of conduct are not upheld by members of the profession,¹⁰⁰ highlights the great importance of the ethical standards to which lawyers are held.

The explanation by former Chief Justice Warren of Australian lawyers’ paramount duty to the court (part of their duty to the administration of justice) crystallises the role of the profession in furthering public interest and trust in the legal process. As she highlighted, a key application of the rule of law lies in the unique fact that the lawyer’s duty to the court is paramount even to the client’s wishes.¹⁰¹ This results in a ‘dual role’: that of both a service provider (to a commercial client), and an officer of the court.¹⁰²

⁹⁹ Judge Jack Goldring, ‘Australian Lawyers and Social Change – 30 Years Later’ (Speech, Australian Lawyers and Social Change Conference, September 2004) 7 <https://law.anu.edu.au/sites/all/files/media/documents/events/goldring_-_30_years_later.pdf>.

¹⁰⁰ See, eg, Law Council of Australia, ‘Release of National Action Plan to Reduce Sexual Harassment in the Australian Legal Profession’ (Media Release, 23 December 2020) <<https://www.lawcouncil.asn.au/media/media-releases/release-of-national-action-plan-to-reduce-sexual-harassment-in-the-australian-legal-profession->>.

¹⁰¹ Chief Justice Marilyn Warren, ‘The Access to Justice Imperative: Rights, Rationalisation or Resolution?’ (Speech, Eleventh Fiat Justitia Lecture, 25 March 2014) 2 <<http://classic.austlii.edu.au/au/journals/VicJSchol/2014/6.pdf>>.

¹⁰² Ibid 16.

Facilitating access to justice

Access to the law is only possible because of the legal profession

As part of ensuring a well-functioning legal system and, in turn, a more cohesive society, the legal profession is instrumental in facilitating access to the legal system. Lawyers facilitate access to justice in many ways, including through the following:

- pro bono contributions;
- services to charitable and not-for-profit organisations;
- legal assistance services;
- facilitating self-representation; and
- early intervention services.

Pro bono contributions

The Australian Pro Bono Centre (**APBC**) defines ‘pro bono’ as ‘the provision of legal services on a free or significantly reduced fee basis,’ deriving from the Latin phrase *pro bono publico* or ‘for the public good’.¹⁰³ Pro bono work is one of the more quantifiable areas in which lawyers assist Australians to access justice, because it is often facilitated through a lawyer’s employment at a firm where hours spent working on matters are frequently recorded.

As was noted by former Law Council President Fiona McLeod SC, pro bono work undertaken by lawyers is a unique aspect of the legal profession and there is no other profession in Australia with such an established culture of giving free help to those who need it.¹⁰⁴

The 270 signatories to the APBC’s *14th Annual Performance Report of the National Pro Bono Target* reported an average of 39.7 pro bono hours per lawyer in the 2020-21 financial year.¹⁰⁵ The number of total hours recorded equated to 357 lawyers performing pro bono legal work fulltime for one year.¹⁰⁶

Pro bono legal services are not only provided through firms: organisations such as the Cancer Council also offer free legal advice on various matters, including insurance claims and disputes and debt management, for eligible clients.¹⁰⁷

¹⁰³ APBC, ‘Information on Pro Bono’ (Web Page) <<https://www.probonocentre.org.au/information-on-pro-bono/>>.

¹⁰⁴ Law Council of Australia, ‘2.86 million pro bono hours: Australian legal profession’s unique contribution to the nation’ (Media release, 28 September 2017), <<https://www.lawcouncil.asn.au/media/media-releases/2-86-million-pro-bono-hours-australian-legal-professions-unique-contribution-to-the-nation>>.

¹⁰⁵ APBC, *14th Annual Performance Report of the National Pro Bono Target* (Report, September 2021) 3 <<https://www.probonocentre.org.au/wp-content/uploads/2021/09/14th-Annual-Target-Performance-Report.pdf>>. Law firms with 50 or more lawyers also reported an average of 35.5 pro bono hours per lawyer in the 2019-20 financial year: APBC, *Report on the 7th National Law Firm Pro Bono Survey* (Report, February 2021) 8 <<https://www.probonocentre.org.au/wp-content/uploads/2021/02/Survey-Report-FINAL.pdf>>.

¹⁰⁶ Ibid.

¹⁰⁷ Cancer Council, ‘Pro bono Program’ <<https://www.cancer.org.au/support-and-services/practical-and-financial-assistance/pro-bono-program>>.

Emeritus Professor Rosalind Croucher AM, President of the Australian Human Rights Commission (**AHRC**), has reflected on the value of ‘the generosity and expertise of the legal community’s pro bono legal work’ in enhancing and promoting human rights protections in Australia.¹⁰⁸ She noted that pro bono assistance ‘may not be visible to the general public,’ but offers ‘vital guidance’ for Australians.¹⁰⁹

Croucher articulated the contribution of pro bono lawyers in the AHRC context, being to provide resources and/or legal expertise in a particular area.¹¹⁰ Pro bono lawyers may also advise in many other areas, from housing to immigration.¹¹¹ Further, the APBC has noted the key part played by Australian pro bono lawyers in answering growing ‘unmet legal need,’ which has resulted from progressive cuts to legal aid funding.¹¹²

This increasing need for pro bono lawyers, and the response by lawyers and firms to meet it, was illustrated in the recent *Report on the Nature and Prevalence of Pro Bono Partner Roles Globally*.¹¹³ The report highlighted that while there were only six dedicated pro bono partners worldwide across the 1990-99 period, there were 66 such positions in 2019, evidencing the commitment by firms and lawyers to pro bono work.¹¹⁴ This commitment is also demonstrated by the practice of some firms to include hours spent on pro bono as a metric for staff key performance indicators.¹¹⁵

Services to charitable and not-for-profit organisations

Lawyers also make an important contribution in assisting vulnerable and disadvantaged clients through their work, paid and voluntary, for charitable and not-for-profit organisations. Such work frequently engages multidisciplinary legal skills and may include the provision of free legal advice and representation to those otherwise ineligible for publicly funded legal assistance.¹¹⁶ Registered charities often also themselves require legal advice to comply with applicable governance standards and duties under the *Corporations Act 2001* (Cth).¹¹⁷

¹⁰⁸ Rosalind Croucher, ‘Pro bono assistance at the Australian Human Rights Commission’ (2020) 4 *Pro Bono Voco* 1, 11 <<https://www.probonocentre.org.au/media/voco-probono-assistance-at-ahrc-rosalind-crocher/>>.

¹⁰⁹ *Ibid* 13.

¹¹⁰ *Ibid* 11.

¹¹¹ Australian Pro Bono Centre, ‘New report reveals a significant increase in pro bono partners’ (Media Release, 25 February 2020) <<https://www.probonocentre.org.au/media/pro-bono-partner-report-media-release/>>.

¹¹² *Ibid*.

¹¹³ DLA Piper, Australian Pro Bono Centre, Pro Bono Institute, and the Thomson Reuters Foundation/TrustLaw, *Report on the Nature and Prevalence of Pro Bono Partner Roles Globally* (Report, February 2020).

¹¹⁴ *Ibid*.

¹¹⁵ See, Australian Pro Bono Centre, ‘The Australian Pro Bono Manual: A practice guide and resource kit for law firms’, Chapter 1.4: Promoting a Pro Bono Culture <<https://www.probonocentre.org.au/aus-pro-bono-manual/part-1/chap-1-4/>>.

¹¹⁶ For example, the Salvation Army offers free legal services in various areas of law for those ‘who are unable to access legal assistance through other services’: The Salvation Army, ‘Legal Services’ <<https://www.salvationarmy.org.au/need-help/legal-services/>>.

¹¹⁷ The Treasury (Cth), *Strengthening for Purpose: Australian Charities and Not-for-Profits Commission: Legislation Review* (2018) <<https://treasury.gov.au/sites/default/files/2019-03/p2018-t318031.pdf>> 44-45.

Case Study



Lawyers as support for individuals facing emotional trauma

The legal profession has a proud and long-standing commitment to pro bono work. In the family law jurisdiction, pro bono and reduced fee work is regularly performed on the understanding that access to legal representation is extremely important in proceedings that may be highly emotional and traumatic for parties.

Paul Doolan is the Immediate Past Chair of the Family Law Section of the Law Council of Australia. He recalls a matter where a woman came to see him and revealed that her husband had been charged with a significant criminal offence against her child from a previous marriage. She had also just had a baby with this man, so she was in a rather desperate situation. It was a heart-breaking story, and Paul provided pro bono advice about family law and child protection.

The matter was further complicated when the former husband, now convicted of very serious offences, pursued a financial claim in family law and sought orders to spend time with their child. Paul continued to provide pro bono representation and was assisted by Senior Counsel who also agreed to provide their services for free.

The matter went through the court system for years, however in the end, the other side ultimately abandoned their case before trial and Paul's client was able to keep her very small apartment and move on with her life.

Paul has remarked that this case reminded him of the worth that lawyers bring and the potential they have to change people's lives. He notes that while there is a lot of unfair and malicious denigration of lawyers in the media at the moment, Paul regards this case as affirming the importance that lawyers bring to clients and society in general, and the commitment they have to assisting those that might not otherwise access justice.



Legal Assistance Services

Further, lawyers offer invaluable assistance to disadvantaged Australians through voluntary and/or salaried work with Legal Aid Commissions (**LACs**),¹¹⁸ Aboriginal and Torres Strait Islander Legal Services (**ATSILS**),¹¹⁹ CLCs,¹²⁰ Family Violence Prevention Legal Services¹²¹ and other Government-funded legal services.

These frontline legal services are for many the only opportunity to obtain legal advice and representation. The sheer scale of lawyers working through LACs to provide assistance to the most vulnerable Australians is revealed by NLA Statistics indicating that as at June 2021, 130,567 civil, criminal and family Legal Aid matters had been assigned to practitioners (including in-house Legal Aid practitioners and external private practitioners) in the 2020-21 financial year.¹²²

In addition, a report on the *Review of the National Partnership Agreement on Legal Assistance Services 2015-2020* conducted by Urbis concluded that private practitioners play 'a critical role' in LAC service provision.¹²³ These lawyers conducted approximately 70 per cent of all legal representation services (while lawyers salaried by LACs made up a similar proportion of duty lawyer services).¹²⁴

Facilitating self-representation and early intervention services

Lawyers also play an important role in the legal system outside the context of a traditional, holistic retainer to represent a client in a particular matter. For example, supported by various organisations nationally, lawyers provide more discrete forms of assistance through the Government-funded national self-representation service.¹²⁵

¹¹⁸ Legal Aid Commissions are independent statutory bodies which provide a range of services, with representation contingent upon means and merits eligibility tests but other more informative or task-based services available without means-testing. They include a Family Advocacy and Support Service for those affected by domestic and family violence. See, Attorney-General's Department (Cth), 'Legal assistance services' (Web Page) <<https://www.ag.gov.au/legal-system/legal-assistance-services>>.

¹¹⁹ Ibid. These services provide legal assistance services to Aboriginal and Torres Strait Islander people in a culturally appropriate and safe manner.

¹²⁰ Ibid.

¹²¹ Ibid. These services provide legal assistance to 'Aboriginal and Torres Strait Islander survivors and victims of family violence and sexual assault' in a culturally sensitive manner.

¹²² National Legal Aid, 'National Legal Aid Statistics' (Web Page) <<https://nla.legalaid.nsw.gov.au/nlareports/reportviewer.aspx?reportname=PractitionerType>>.

¹²³ Urbis (commissioned by the Attorney-General's Department (Cth)), *Review of the National Partnership Agreement on Legal Assistance Services 2015-2020* (Final Report, 19 December 2018) <<https://www.ag.gov.au/system/files/2020-06/Review-of-the-NPA.pdf>>.

¹²⁴ Ibid.

¹²⁵ See, Attorney-General's Department (Cth), 'National Self-Representation Service' (Web Page) <<https://www.ag.gov.au/legal-system/legal-assistance/national-self-representation-service>>. The national self-representation service is provided by LawRight, Legal Aid Western Australia, JusticeNet South Australia and Justice Connect.



Early intervention is another key legal service. In health justice partnerships (**HJPs**) and/or domestic violence units (**DVUs**) offered by or through a range of organisations, lawyers engage in various activities such as working with health practitioners to improve the practitioners' ability to identify when their clients face legal problems, such as domestic violence, and to connect them with the appropriate services.¹²⁶

In 2019, a report commissioned by the Attorney-General's Department found that HJPs and DVUs offered over 2,500 'legal and non-legal supports' to clients each quarter they were operative in a pilot program in 2017.¹²⁷ The report found numerous positive outcomes for women who accessed these services, including greater safety and wellbeing, as well as improved legal outcomes and outcomes with non-legal issues.¹²⁸ One of the factors attributed to the success of the pilots was the skill, experience and compassion of the employees involved, including those with legal backgrounds.¹²⁹

¹²⁶ See, Attorney-General's Department (Cth), 'Specialist domestic violence assistance' (Web Page) <<https://www.ag.gov.au/legal-system/legal-assistance/specialist-domestic-violence-assistance>>.

¹²⁷ Social Compass (commissioned by the Attorney-General's Department (Cth)), *Evaluation of the Pilot Program of Specialist Domestic Violence Units and Health Justice Partnerships Established Under the Women's Safety Package* (Final Report, February 2019) vi <<https://www.ag.gov.au/sites/default/files/2020-03/final-report-evaluation-of-the-dvus-and-hjps.pdf>>.

¹²⁸ Ibid vii.

¹²⁹ Ibid viii.



Lawyers as compassionate advocates

Georgina Costello QC is a Melbourne-based barrister specialising in commercial, property, regulatory, administrative and common law matters. When asked to reflect on the value of the legal profession to the lives of community members, Georgina points to migration and citizenship law as areas where the work of lawyers can be pivotal in cases that impact the lives of people and their families.

Georgina recalls a matter in which she, together with lawyer Sousan Oboodi, assisted Jane*, an Australian health care worker who while working at a Hospital in Asia assumed care for a newborn baby boy who had been abandoned by his biological parents. At birth the child suffered from a cleft lip and palate, and the Administrative Appeals Tribunal (**AAT**) would later find it likely that the child was abandoned due to a belief that his condition was a curse, and he was at risk of being neglected or even killed.

Concerned for the life of the baby, Jane received approval to be his primary carer, and from that time onwards assumed the role of being his mother, raising him as her own son. 18 months later, Jane took on parental responsibility for a second child under similar circumstances, and would go on to support two other babies who had been abandoned.

In 2019, two of the boys under Jane's care (now young adults, one of whom was living in Australia) applied for Australian citizenship, however were both refused on the grounds that they did not have an Australian citizen parent at the time of their birth. The matter was brought before the AAT where it was successfully argued by Jane's legal team that she, under the circumstances, could be identified as a parent from the time of birth, opening a pathway for Australian citizenship for her sons.

"Georgina and Sousan's tenacious belief in our family spurred us on over these many years and their empathy and kindness went far above and beyond mere professionalism", Jane says. "The support and guidance through the whole tribunal process was such a strength and comfort. We all cried when the cases were decided in our favour, I think this shows just how much Georgina and Sousan invested of themselves into our children and family; it was a fantastic win, for all of us."

Georgina explains that litigation in migration and citizenship matters in the AAT and in Federal Courts can be classic 'David v Goliath' battles in which individuals seeking visas or citizenship face a complex system they are not equipped to navigate without a migration lawyer. "I have seen many dedicated and capable migration lawyers who through their advocacy, have made profound impacts on the lives of migrants and the Australian family members of migrants," she says.

"Working on Jane's case has been a highlight of my career and I'm proud to be part of a profession that is able to fight for justice in cases that make a profound difference to people's lives," Georgina reflects.

**Deidentified for privacy.*

Advocacy and social change

Lawyers offer a voice and tools to those seeking justice

The defence of rights and provision of a voice to those who might otherwise not be heard is another critical part of the legal profession's role in ensuring the administration of justice. Lawyers offer an invaluable service by equipping those who seek personal remedy or social change through the justice system, including members of a class action or claimants in strategic litigation, with the means of doing so.

In 1990, the OHCHR emphasised the role of lawyers in upholding fundamental rights by stating that 'effective access to legal services provided by an independent legal profession' is a prerequisite to every person's enjoyment of the protection of the rights and freedoms to which they are entitled.¹³⁰

The strong link between access to justice and the ability to uphold one's rights and freedoms also explains why 'legal empowerment' has been associated with 'international development' by some commentators and, in Australia, with addressing poverty.¹³¹ James Farrell articulates the end goal of 'legal empowerment,' as he defines the term, as being that those experiencing disadvantage becoming 'able to use the law, the legal system, and legal services to protect and advance their rights and interests'.¹³² This clarifies the inextricable relationship between access to justice and rights protection.

By way of illustrating the impact which a lawyer may have on an individual's ability to exercise his or her legal rights, the OECD refers to work performed by the Boston Bar Association's Task Force on the Civil Right to Counsel (**BBA Task Force**).¹³³ In 2012, the BBA Task Force conducted two pilot projects in relation to eviction matters¹³⁴ and found that of those tenants who received full representation by a lawyer, two-thirds avoided eviction, compared to one-third of tenants who did not receive such representation.¹³⁵

Further, research shows that legal representation for individuals accelerates the timeline for filing and resolving complicated disputes such as divorce cases and increases a client's

¹³⁰ *Basic Principles on the Role of Lawyers*, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Havana, Cuba, 27 August - 7 September 1990) <<https://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfLawyers.aspx>>.

¹³¹ James Farrell, *How lawyers can support and empower communities to achieve change* (Final Report, April 201) 8-11 <https://communitylegalqld.org.au/sites/default/files/_dbase_upl/Churchill%20final%20report.pdf>.

¹³² *Ibid* 11.

¹³³ See, Task Force on Expanding the Civil Right to Counsel, Boston Bar Association, *Gideon's New Trumpet: Expanding the Civil Right to Counsel in Massachusetts* (September 2008) <https://bostonbar.org/prs/nr_0809/GideonsNewTrumpet.pdf>.

¹³⁴ See, Task Force on Expanding the Civil Right to Counsel, Boston Bar Association, *The Importance of Representation in Eviction Cases and Homelessness Prevention* (March 2012) 1 <<https://bostonbar.org/docs/default-document-library/bba-crtc-final-3-1-12.pdf>>.

¹³⁵ *Ibid* 2.

chances of being awarded spousal support in the event of a custody dispute.¹³⁶ The OECD asserts that when individuals are assisted to stand up for their rights, the rule of law is 'enhanc[ed]...in practice'.¹³⁷ Unjust behaviours and power dynamics in society may adapt in response to individual claims, and reform may be triggered at a legal and/or institutional level.¹³⁸

Indeed, the potential for institutional change is exemplified by a number of cases to which Australian lawyers have lent their expertise. One notable example is that of *Mabo v Queensland (No.2) (Mabo)*.¹³⁹ In that case, a small number of plaintiffs was represented by a small team of lawyers in asserting the traditional rights of the Meriam people to areas of land in the Murray Islands and surrounds.¹⁴⁰ They were ultimately successful at the High Court, in a decision which has had, in the words of the Hon Margaret White AO, a 'profound effect' on Australia.¹⁴¹ Former Chief Justice Warren similarly describes the manner in which 'the foundation of land law in Australia' was altered by the decision, achieving justice through land rights and reconciliation with First Nations Australians.¹⁴² Darryl Browne has written a 'homage' to the plaintiffs' lawyers in *Mabo*, without whose 'perceptive, dogged and fearless advocacy of the rights of the indigenous peoples,' Browne argues, the case would not have proceeded.¹⁴³

Members of a class action are also assisted by lawyers to press for social change. As set out in the report by the Parliamentary Joint Committee on Corporations and Financial Services (**PJCCFS**) on litigation funding and the regulation of the class action industry, Professor Vince Morabito has indicated that between 1992 and 2017 a range of areas of law have been the subject of class actions in Australia, from product liability to mass tort, and consumer protection to investor.¹⁴⁴

¹³⁶ Organisation for Economic Co-operation and World Justice Project, *Building a Business Case for Access to Justice* (OECD White Paper) 43 <<https://www.oecd.org/gov/building-a-business-case-for-access-to-justice.pdf>>.

¹³⁷ *Ibid.*

¹³⁸ *Ibid* (finding 12).

¹³⁹ (1992) 175 CLR 1.

¹⁴⁰ Margaret White, 'Mabo v State of Queensland (No 2): a personal recollection' (Speech, Selden Society Lecture Series (Lecture Four), 22 September 2016) 2 <www5.austlii.edu.au/au/journals/QLdJSchol/2016/31.pdf>.

¹⁴¹ *Ibid* 1.

¹⁴² Chief Justice Marilyn Warren, 'What is justice?' (Speech, Newman Lecture, Mannix College, 20 August 2014) 7-8 <classic.austlii.edu.au/au/journals/VicJSchol/2014/12.pdf>.

¹⁴³ Darryl Browne, 'In homage to the lawyers that made Mabo', *Browne Linkenbach Legal Services* (Blog Post, 27 May 2016) <<https://brownelinkenbaghlegalservices.com.au/in-homage-to-the-lawyers-that-made-mabo/>>.

¹⁴⁴ Parliamentary Joint Committee on Corporations and Financial Services, *Litigation funding and the regulation of the class action industry* (Final Report, December 2020) 28.



The PJCCFS reported that over the course of its inquiry, it received extensive positive stakeholder feedback about class actions as a means to overcome the cost barrier which the civil justice system in Australia frequently poses for individuals, including where a single claim may be of relatively small monetary value and so not considered worth pursuing in isolation.¹⁴⁵ The ability to overcome this barrier can result in improved access to justice, have a deterrent effect on wrongdoing, and ensure court resources are used efficiently.¹⁴⁶ A remedy is provided to claimants who have suffered loss or damage and a defendant is afforded a sense of closure to a dispute.¹⁴⁷

The Kilmore East-Kinglake Bushfire Class Action is a recent example of the sense of justice which lawyers can deliver their clients through representation in a class action. This case was brought by a class of survivors of the bushfire which killed 119 people and destroyed or damaged over 2000 homes.¹⁴⁸ As former Chief Justice Warren has observed, the monetary sum for which the matter ultimately settled offered a form of 'compensatory' justice for the bushfire's victims.¹⁴⁹ Further discussion as to the value of lawyers in the wake of large-scale disasters is continued in the next chapter.

¹⁴⁵ Ibid xiii.

¹⁴⁶ Ibid xiii.

¹⁴⁷ Ibid 40.

¹⁴⁸ Chief Justice Marilyn Warren, 'What is justice?' (Speech, Newman Lecture, Mannix College, 20 August 2014) 6 <classic.austlii.edu.au/au/journals/VicJSchol/2014/12.pdf>; Maurice Blackburn Lawyers, 'Kilmore East-Kinglake Bushfire Class Action' (Web Page) <<https://www.mauriceblackburn.com.au/class-actions/past-class-actions/bushfire-class-actions/kilmore-east-kinglake-bushfire-class-action/>>.

¹⁴⁹ Ibid 6.



Lawyers and responding to past injustices

Joshua Creamer is a Waanyi and Kalkadoon man who has been working as a barrister for over ten years. As part of the Lawyer Project, Joshua has recounted two matters where he supported First Nations communities to obtain financial compensation for historical unjust treatment. The first followed the death in custody of an Indigenous man in Palm Island in 2004, while the second relates to the systemic unpaid wages regime that was in place for First Nations people dating back to the 1800s.

Reflecting on his work on Palm Island, Joshua emphasises the brutal history of the Island and the extreme levels of control and hardship that successive generations of First Nations families had been subjected to over many years.

Following the death in custody of an Indigenous man in 2004, Joshua's advocacy helped to produce a determination that police had been racially discriminatory in a range of actions. In 2015, \$35 million compensation was ordered for 447 members of the Palm Island community, bringing some resolution to the pain that had been experienced by many over the previous 13 years.

"For some on Palm Island, this meant being able to purchase their first car, or another asset that you or I may take for granted", Joshua says. However, as Joshua observes, the win represented more than just financial compensation, stating that "It has allowed a community that had for so long felt suppressed to at last feel as though they had the ability to stand up against unjust treatment from authorities, and be successful in doing so".

When recounting his work on stolen wages, Joshua speaks of his travels across Australia where he met with First Nations communities to better understand the traumatic impacts of a regime that restricted access to education, stripped away assets and sent individuals to work without the ability to directly receive any wages. While no amount of money could address the inter-generational trauma associated with these policies, the \$190 million settlement that Joshua helped obtain on behalf of those affected by the stolen wages regime allowed many to take steps towards a new life. Joshua recalls a family that used compensation received on behalf of their deceased mother to finally bury her in a location that they weren't able to previously access, while others could at last afford headstones for their parents and grandparents that had worked under the oppressive conditions.

"More broadly, the settlement for many represented a long-awaited recognition of the opportunities that had been stripped away under the stolen wages scheme, and the demoralising nature of the policies at the time. This had been an open wound across decades, and for many the settlement provided a form of closure and acknowledgement of the circumstances they were placed under", Joshua says.

In both matters, Joshua emphasised the important role of the legal system in capturing the stories and historical events in an official form. While the impact of this work has had a profound effect on those subjected to past injustices, these outcomes will also ensure that stories are made available to generations to come, and can assist to reconcile the past while providing a source of learning for the future.

Case Study



Access to justice for vulnerable communities

Between 2009 and 2013, a large number of Queenslanders entered into 'pay-day loan' agreements which attracted extremely high interest rates, forcing many into further financial hardship and debt.

A class action was initiated against the pay-day lender on behalf of 68,000 consumers, many of whom were facing significant disadvantage or vulnerability with more than 60 per cent of the customers have annual incomes of somewhere between \$12,000 and \$35,999.

With the assistance of their legal team, class members received a large financial settlement – an outcome that for many would not have been achievable without the class action framework and the willingness of the legal profession to facilitate access on their behalf.

Susan* was one of the beneficiaries of the successful class action. She wrote the following to her lawyers in response to the news that compensation would be forthcoming:

“Thank you for instigating and successfully negotiating a settlement in the above class action. I really appreciate you taking on an organisation who charged exorbitant interest rates/brokerage fees and took advantage of people who (mostly) were in a desperate situation. I was one of those who became caught up in a cycle of debt and made some poor financial choices. It has meant a lot for you to go into bat on my behalf and I really appreciate the return of part of the fees I paid. Please continue to fight injustices.”

**Deidentified for privacy.*



Part 3: Contribution in times of large-scale crisis or disaster

Lawyers are a critical part of disaster response

In times of major disaster, the emotional impact of human loss and suffering naturally attracts much public attention and, quite rightly, the role of first responders in meeting the most immediate and basic needs of affected communities is celebrated. However, large scale crises will also raise a range of unexpected legal issues for those affected. The role of the legal profession in coming to the aid of those in need is an integral, but often overlooked, part of the disaster relief effort.

As noted by David Lash, while lawyers are not generally considered key first responders, their assistance in the wake of a disaster endures for months and even years into the future.¹⁵⁰ Reflecting on this position, Lash observes that ‘after the headlines move on, the lawyers carry on’.¹⁵¹

In particular, the contributions of pro bono legal support and frontline legal assistance services have been extraordinary in the response to many Australian disasters over the last two decades.

Elyse Mosquini asks whether lawyers are ‘unsung disaster heroes’, noting:

*... the images we most readily associate with disaster response are of the arrival and distribution of relief goods... Less often do we think of the legal and regulatory systems within which disaster operations are conducted. The lawyers and bureaucrats who design these systems are unlikely to be heralded as disaster heroes, but their role in facilitating and regulating an effective response can be just as crucial to ensuring that critical relief swiftly reaches those most in need.*¹⁵²

The importance of the legal profession in times of disaster is an extension of the fundamental role of a lawyer as counsellor and advocate for clients in challenging circumstances. In this regard, Daniel Farber notes that lawyers are in the business of solving problems, and disasters ‘trigger an avalanche of personal, family, institutional, and economic problems’.¹⁵³ Noting this unique skillset, lawyers have a particularly valuable role in times of large-scale disaster, as evidenced recently in Australia from the response of the legal profession to support the communities during the COVID-19 pandemic and 2019-20 bushfire emergencies.

¹⁵⁰ David Lash, ‘Lawyers as Essential Second Responders in Catastrophes’, *Lawdragon* (online, 11 May 2020) <<https://www.lawdragon.com/2020/05/11/lawyers-as-essential-second-responders-in-catastrophes/>>.

¹⁵¹ *Ibid.*

¹⁵² Elyse Mosquini, ‘Are Lawyers Unsung Disaster Heroes?: The Importance Of Well-Prepared Domestic Legal And Regulatory Frameworks For Effective Disaster Response’ (2011) 25 *Emory International Law Review* 1217, 1217 <<https://law.emory.edu/eilr/content/volume-25/issue-3/symposium/lawyers-unsung-heroes-legal-regulatory-frameworks-disaster.html>>.

¹⁵³ Daniel A Farber, ‘Introduction: The Role of Lawyers in a Disaster-Prone World’ (2007) 31(3) *Nova Law Review* 403, 407 <<https://nsuworks.nova.edu/cgi/viewcontent.cgi?article=1183&context=nlr>>.

Disaster responses

As devastating bushfires raged across south-eastern Australia in the summer of 2019-20, there was a recognised need to assist communities with associated legal matters, including in relation to insurance, family law and family violence, tenancy and housing and social security issues.

Two key features of the legal profession's response to the 2019-20 bushfires were the willingness of all sectors of the profession to offer help, and the timeliness of coordination efforts. As part of a coordinated response, a number of organisations within the legal assistance sector (including Legal Aid NSW, Victorian Legal Aid, Justice Connect, CLCs NSW, the Law Society of NSW, the Law Institute of Victoria, the Victorian Federation of CLCs the NSW Bar Association and the Victorian Bar) developed a formalised process for volunteering pro bono legal support for those affected.¹⁵⁴

This response was based in part on the 'Bushfire Legal Help' resource, which was created within two days of the Victorian bushfires of 2009. The product of a unique collaboration between Victoria's legal profession peak bodies, the resource provided free legal advice to bushfire victims and their communities under a single banner.¹⁵⁵ In commenting on the role of the legal profession in the 2009 bushfire response, 'Bushfire Legal Help' states:

*Bushfire Legal Help played an important role in helping people recover from the bushfire emergency, particularly as victims turned to rebuilding their lives. Legal advice and help was able to ease some of the shock and trauma of victims by helping them to deal with a plethora of immediate needs which could have become overwhelming, such as Wills and estate administration, insurance claims, dealing with utility companies and replacement of lost documents.*¹⁵⁶

The Royal Commission into National Natural Disaster Arrangements recently acknowledged the role of the legal profession in responding to legal needs arising from natural or human generated disasters. The Royal Commission recommended that Australian, state and territory governments should expedite the development of pre-agreed recovery programs, including those that address social needs, such as legal assistance.¹⁵⁷

¹⁵⁴ Australian Pro Bono Centre, 'Bushfires – National Pro Bono Legal Support', *About the Centre* (Web Page, 21 January 2020) <<https://www.probonocentre.org.au/media/bushfires/>>.

¹⁵⁵ Bushfire Legal Help, Victoria Legal Aid, *Legal assistance and community recovery after the 2009 Victorian bushfires - The Bushfire Legal Help response* (Report, March 2010) <<http://www.nationalprobono.org.au/ssl//CMS/files/cms/NA2JPBC2010-BushfireLegalHelpReport.pdf>>.

¹⁵⁶ *Ibid* 2.

¹⁵⁷ *Royal Commission into National Natural Disaster Arrangements* (Report, 28 October 2020) rec 22.5 <<https://naturaldisaster.royalcommission.gov.au/publications/royal-commission-national-natural-disaster-arrangements-report>>.

Legal networks have united to respond to the needs of communities reeling from a natural disaster in many other instances too. For example, major flooding in south-east Queensland in 2013 raised myriad legal problems for affected residents and businesses, from property or car damage, insurance, tenancy issues, debt, employment and access to electricity and other services. Once again, the profession responded with innovation by creating dedicated factsheets and helplines as part of Legal Aid Queensland's natural disaster legal help program.¹⁵⁸ This coordinated response from legal assistance service providers built on the experiences and lessons learned from the flood disaster that had occurred two years prior.

While frontline legal assistance services and pro bono contributions have consistently been used in the profession's response to the immediate legal needs of communities affected by natural disaster, facilitation of compensation for systemic or large-scale loss through the use of class action litigation is another critical service. Class actions brought following the Black Saturday Bushfire in Victoria and the 2011 flooding in Queensland, for example, each resulted in significant distributions of compensation to community members.¹⁵⁹

¹⁵⁸ Legal Aid Queensland, *Natural disaster legal help* (Web Page) <<https://www.legalaid.qld.gov.au/Get-legal-help/Our-services/Natural-disaster-legal-help>>.

¹⁵⁹ See, eg, *Matthews v SPI Electricity Pty Ltd* (Victorian Supreme Court No. SCI 4788 of 2009) ('Kilmore Bushfire Class Action').

Case Study



The legal profession in times of crisis

The devastating bushfires in south-east Australia during the summer of 2019/20 affected the livelihoods of many individuals and businesses. Beyond the most immediate and basic needs of those communities impacted by the bushfires, a range of legal problems soon followed, including matters relating to insurance, tenancy and housing, social security and employment.

As with natural disasters that had occurred prior to the 2019/20 bushfires, the legal community mobilised to delivered a range of support services to address the legal needs of those communities affected by the fires. As part of coordinated response to mobilise resources, a number of organisations within the legal assistance sector (including Legal Aid NSW, Victorian Legal Aid, Justice Connect, CLCs NSW, the Law Society of NSW, the Law Institute of Victoria, the Victorian Federation of CLCs and the NSW and Victorian Bar Associations) together developed a formalised process for volunteering pro bono legal support for those affected by the bushfires.

Embracing of technology products played a foundational role in the legal profession's pro bono disaster response, for example, Justice Connect's 'Pro Bono Portal' was used to match volunteer lawyers with communities in need in a remarkably short timeframe. By the end of January 2020, over 150 firms had joined up to this Portal to provide pro bono legal services to affected people across NSW and Victoria. The continued willingness for lawyers to volunteer their pro bono support to individuals and communities in times of need is a great example of how committed the legal profession is to promoting access to justice and looking out for those that are experiencing marginalisation or disadvantage.

In its submission to the Royal Commission into National Natural Disaster Arrangements, Justice Connect reported that in the three months following the 2019/20 bushfires, it had processed 78 bushfire-related requests from individuals and organisations seeking pro bono support, and assisted 20 community groups with legal issues relating to the bushfires.



Case Study



A client's story

(with thanks to Justice Connect)

For over a decade, James* had lived and worked on a large rural property under verbal agreement with the landowner. He took care of the property and livestock and, in return, was able to live in his mobile home on the land. The landowner covered expenses such as utilities and insurance. While the landowner also had a property on the land, he didn't live there and stayed primarily in Melbourne.

When the bushfires ravaged the area on 30 December 2019, James's mobile home was completely destroyed. The fires also took the landowner's property and the garage, which was filled with James's belongings. He lost his motorbike, generators, farm equipment and all his personal belongings. The landowner asked James to make a list of everything he lost. When he did, his list added up to a total of \$156,000 worth of contents.

Shortly after, the landowner told James that he was getting an insurance payout of \$300,000 and that he would be keeping all of it to build a bigger house. James was confused — the payout seemed much larger than the landowner's house was worth, but the landowner made no mention of the insurance on James's belongings. James was certain that the landowner had used his list of contents towards getting the payout.

James confronted the landowner which only caused the breakdown of their communication completely. James moved off the landowner's property to live with his mother in eastern Victoria. While he didn't want to return to the property, James wanted his share of the insurance payout, so he could buy a small piece of land and mobile home to live in.

James reached out to Victoria Legal Aid, where he was referred to Justice Connect for pro bono legal help. Lawyers were able to provide pro bono support to James and helped write a letter of demand to the landowner, asking for what James was owed. James was thankful to be connected with local lawyers who could better understand and support him.

Without our pro bono support, many people like James never would have received legal help at all. James was empowered to understand his rights and take action, and with the support of pro bono lawyers behind him, James felt was able to stand up to the landowner and tell his side of the story.

**Deidentified for privacy.*



COVID-19 pandemic

Advice to individuals and business on pandemic-related legal issues

Lawyers have been relied upon during the COVID-19 pandemic for support and guidance on the innumerable legal issues to which the public health crisis has given rise, for both individuals and organisations. For individuals and businesses alike, legal issues relating to tenancy, industrial relations and bankruptcy have increased. As in times of natural disaster, it is lawyers who are asked to navigate their clients through such difficulties. The ABS notes that commercial clients have also increasingly turned to the legal profession for advice and support.¹⁶⁰ A recent report by the ABS shows that 49 per cent of all businesses (small, medium and large) relied upon external advisors, including lawyers, in the face of the uncertainty caused by the pandemic.¹⁶¹

The role of the legal profession in the wake of the COVID-19 pandemic has also been recognised in the United States. Lash describes what mobilisation meant in practice, as follows:

*Informational sheets and FAQs have been prepared so that those impacted by the crisis have an outline of their rights as tenants, employees, employers, consumers, insurance policy owners, borrowers and taxpayers. The legal aid and pro bono communities have been engaged in around-the-clock discussions and planning so that those most in need have access to legal help, even in the absence of legal clinics and other face-to-face standard intake procedures.*¹⁶²

¹⁶⁰ Australian Bureau of Statistics, *Business Indicators, Business Impacts of COVID-19* (Catalogue No 5676.0, 24 June 2020) <<https://www.abs.gov.au/statistics/economy/business-indicators/business-conditions-and-sentiments/jun-2020>>.

¹⁶¹ Ibid.

¹⁶² Daniel A Farber, 'Introduction: The Role of Lawyers in a Disaster-Prone World' (2007) 31(3) *Nova Law Review* 403, 407 <<https://nsuworks.nova.edu/cgi/viewcontent.cgi?article=1183&context=nlr>>.

Scrutiny and communication of extraordinary executive powers

The legal profession has also been a scrutineer, interpreter and communicator of the suite of laws and regulations that have been developed in response to the public health emergency. The extent of executive action taken in response to the outbreak, including through public health orders restricting travel and other activity, has been extreme and far-reaching. The legal profession has played a critical role in analysing these responses and interpreting their practical effect for the broader population.

The legal sector has closely monitored the emergency vesting of increased powers with the executive, including through contributions to parliamentary scrutiny processes and social commentary.¹⁶³ Farber notes the profession's critical role here:

*One of the key roles that lawyers can play is to help clarify and reform disaster law, a generally neglected subject. This field of law is ripe for reexamination. Disaster law sometimes seems like an unrelated collection of legal rules of various kinds that happen to come into play when communities have suffered severe physical damage. But at a deeper level, disaster law is about assembling the best portfolio of legal rules to deal with catastrophic risks, a portfolio that includes strategies for prevention, emergency response, compensation and insurance, and rebuilding.*¹⁶⁴

¹⁶³ For example, throughout the COVID-19 pandemic lawyers and their organisations, including the Law Council, have closely monitored reforms and initiatives such as the introduction of the 'COVIDSafe' app, laws and regulations permitting virtual company meetings and electronic signatures, the use of 'Henry VIII clauses' given leaders broad law-making powers, and others.

¹⁶⁴ Daniel A Farber, 'Introduction: The Role of Lawyers in a Disaster-Prone World' (2007) 31(3) *Nova Law Review* 403, 407 <<https://nsuworks.nova.edu/cgi/viewcontent.cgi?article=1183&context=nlr>>.

Case Study



Lawyers responding to new and emerging threats

Shannon Finch is a leading corporate lawyer and volunteers with the Corporations Committee of the Law Council of Australia's Business Law Section. This Committee takes an active role in consultation and submissions on law and policy reform proposals as they relate to Australian corporations and securities laws.

In February 2020, as the COVID-19 threat was surfacing in Australia, Shannon and her Committee quickly recognised the potentially disastrous impact on corporations and financial markets in the advent of a global pandemic, and the severe risks to the Australian economy if access to equity were to be disrupted as a result of the looming crisis.

Drawing on the experiences gained from the global financial crisis, Shannon and her Committee proactively sought out urgent discussions and briefings with key policy makers, regulators and stakeholders, and proposed a wide range of legislative and policy solutions to allow the corporate sector to remain financially stable during the pandemic.

The extensive work of Shannon and her Committee in extremely challenging circumstances led to emergency reforms that addressed issues such as the electronic execution of critical documents, virtual general meetings for companies, flexible audit processes and extensions of time for financial reporting, all at a time when physical distancing created a myriad of challenges for Australian corporations and financial markets.

The 'behind the scenes' work volunteered by Shannon and her Committee included countless meetings and collaborative discussions with the view to developing practical solutions to unique and significant challenges. This work was highly technical, time consuming and undertaken at a time of immense pressure, often requiring work late into the night or early hours of the mornings. It required Shannon and her colleagues to dedicate significant amounts of their own time to help find a way through the economic crisis.

Shannon's efforts in driving emergency reform during the pandemic focussed on the ongoing viability of the corporate sector, but there are also clear economic benefits flowing to the broader Australian community as a result of her outstanding commitment towards ensuring a resilient commercial and financial sector.



Part 4: Contribution to public policy

*Lawyering is not just what happens in the courtroom.
Often it is also about aiding policy or
law reform at a higher level*

The Hon Sir Gerard Brennan AC KBE asserts that ‘lawyers should be, and often are, involved in the process of making our laws. Apart from their engagement in politics, they can explain how the rule of law is impaired by dismantling or reducing the conventional safeguards of law and the legal process’.¹⁶⁵

This section explores the critical role the legal profession plays in the development of public policy in Australia, including a focus on the role of lawyers in assisting systemic inquiries into key public policy issues, in the development and scrutiny of laws and regulations impacting corporations, community organisations, individuals and the natural environment, and in engaging in advocacy and ensuring accountability and transparency (particularly in relation to actions of the executive arm of government).

Advocacy for policy or law reform

As noted earlier in this report, lawyers play an essential role in the defence of rights and the provision of support and advice to those who seek personal remedy or social change through the processes available in the justice system (including class actions and strategic litigation). However, lawyers also play a critical role outside of the courtroom and the justice system. They advocate for policy or law reform at a higher level, including by advancing the interests of those who are vulnerable or require assistance in participating in policy development.

Lawyers frequently contribute to the development and scrutiny of policy or law reform through many actions beyond those that would be generally considered ‘lawyering’. These include:

- contributing to parliamentary processes (for example, written submissions and appearances at parliamentary hearings);
- contributing to public sector processes (for example, written submissions, involvement in consultations, meetings, roundtables, etc);
- engaging in lobbying activities (for example, meeting with local or national politicians to advocate for change);
- media campaigning activities; and
- activism or protest.

¹⁶⁵ Sir Gerard Brennan, ‘The Role of the Legal Profession in the Rule of Law’ (Speech, Supreme Court of Queensland, 31 August 2007) <<https://nswbar.asn.au/circulars/brennan.pdf>>.

An indicative list of frequent submitters across the legal sector, compiled by the Law Council (and by no means complete), shows that in 2020 and despite the various impacts of the COVID-19 pandemic:

- the Law Council, with the assistance of its Constituent Bodies, Advisory Committees and Sections, made 218 submissions. In addition, the Law Council's Constituent Bodies made a significant number of submissions of their own (in particular at the state/territory level);¹⁶⁶
- Legal Aid NSW made at least 28 publicly available submissions;¹⁶⁷
- Consumer Law Action Centre made at least 49 publicly available submissions;¹⁶⁸
- Human Rights Law Centre made at least 18 publicly available submissions;¹⁶⁹ and
- National Aboriginal and Torres Strait Islander Legal Services made 8 publicly available submissions (with its members further contributing a number of submissions).¹⁷⁰

Through such activities, lawyers seek to make change at a systemic level by advocating for changes to laws and policies. There are various avenues through which lawyers engage, including their day-to-day work (see above discussion of the important role of legal assistance lawyers in advocacy for policy or law reform) and through other community organisations or bodies. Many lawyers are also deeply involved in professional organisations such as the Law Council and its Constituent Bodies, noting that the law societies and bar associations of Australia's states and territories undertake extensive and far-reaching policy work on major law reform issues in their respective jurisdictions.¹⁷¹

Lawyers are well placed to undertake reform work

Lawyers and their organisations are often classified as part of 'civil society' or 'community sector organisations' when undertaking advocacy or reform activities (particularly, this occurs on a volunteer basis or as part of a not-for-profit organisation). The importance of civil society in filling 'the space between the state and the market' and ensuring a healthy democracy was highlighted in 2009 by the International Centre for Not-For-Profit Law and United Nations

¹⁶⁶ Law Council of Australia, *Submissions* (Web Page) <<https://www.lawcouncil.asn.au/tags/submissions>>.

¹⁶⁷ Legal Aid New South Wales, *2020 Submissions* (Web Page) <<https://www.legalaid.nsw.gov.au/what-we-do/law-reform/2020-submissions>>.

¹⁶⁸ Consumer Action Law Centre, *Submissions* (Web Page) <<https://consumeraction.org.au/submissions/>>.

¹⁶⁹ Human Rights Law Centre, *Submissions* (Web Page) <<https://www.hrlc.org.au/submissions>>.

¹⁷⁰ National Aboriginal and Torres Strait Islander Legal Services, *Policy & Advocacy* (Web Page) <<https://www.natsils.org.au/policy-advocacy/>>.

¹⁷¹ For example, the Law Society of New South Wales made over 200 submissions in the 2019-2020 financial year, advising that the majority of these were under its own banner: Law Society of New South Wales, 'Annual Report' <https://www.lawsociety.com.au/sites/default/files/2020-09/LSNSW_Annual-report_2019-20_2020-09-29_Final.pdf> 13. In the same financial year, the Law Society of Tasmania made a range of submissions on matters from bullying and sexual harassment in the profession, to strata titles legislation in Tasmania and stamp duty exemptions: Law Society of Tasmania, 'Annual Report 2019/2020' (16 October 2020) <https://issuu.com/taslawociety/docs/annual_report_2019-2020_issu?fr=sM2lwNTlwNTlyMjc>. This is only a snapshot of the submission work undertaken across the many jurisdictions and legal professional associations around Australia.

Development Programme.¹⁷² Strong civic engagement is, in the view of these organisations, ‘an essential element of participatory governance’.¹⁷³

In a similar vein, Maria Dakolias notes that the ‘participation of civil society in designing and monitoring the reform process’, as well as implementation, is a means of improving access to justice.¹⁷⁴

The Law and Justice Foundation of NSW has also emphasised the value of drawing upon the frontline expertise and insights of community sector organisations in the exercise of law-making. The Foundation notes that such organisations ‘perform a key role in law reform’ because they:

- can often see first-hand the issues affecting clients;
- are well placed to identify trends or issues that may develop over time;
- often have the capability and resources to engage in law reform processes; and
- are able to give a voice to their clients and others who might otherwise be shut out by policy or law reform processes.¹⁷⁵

This point was also made by the Law Council in the *Justice Project Final Report*. The Law Council identified the importance of lawyers empowering their clients and communities to drive reform, on the basis that ‘an overwhelming majority of the population’ understandably lacks the high level of knowledge and skills normally needed when participating in law reform.¹⁷⁶

Legal assistance sector lawyers and their organisations are at the forefront of law reform activities to the benefit of the community, with several examples described in the *Justice Project Final Report*.¹⁷⁷ The value of this work has been recognised in a number of contexts.¹⁷⁸ In the 2014 *Access to Justice Arrangements* report, the Productivity Commission

¹⁷² International Centre for Not-For-Profit Law and United Nations Development Programme, *The Role of Legal Reform in Supporting Civil Society: An Introductory Primer* (Report, August 2009) 5 <https://www.undp.org/content/dam/undp/documents/partners/civil_society/publications/role_of_legal_reform_in_supporting_civil_society_november_2009.pdf>.

¹⁷³ Ibid.

¹⁷⁴ Maria Bakolias, ‘Legal and Judicial Development: The Role of Civil Society in the Reform Process’ (2000) 24 *Fordham International Law Journal* <<https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1778&context=ilj>>.

¹⁷⁵ Natalina Nheu and Hugh McDonald, Law and Justice Foundation of New South Wales, *By the People, for the People? Community participation in law reform* (Report, November 2010) 201-208 <[http://www.lawfoundation.net.au/ljf/site/articleIDs/CC42E4B3179ECC48CA2577EB000460AF/\\$file/ByThePeopleForThePeople_web.pdf](http://www.lawfoundation.net.au/ljf/site/articleIDs/CC42E4B3179ECC48CA2577EB000460AF/$file/ByThePeopleForThePeople_web.pdf)>.

¹⁷⁶ Law Council of Australia, *The Justice Project: Final Report – Legal Services Chapter* (August 2018) 66 <<https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Final%20Report/18%20-%202018%2009%20-%20Final%20-%20Legal%20Services%20%28Part%20%29.pdf>>.

¹⁷⁷ Law Council of Australia, *The Justice Project: Final Report – Legal Services Chapter* (August 2018) 64-6 <<https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Final%20Report/18%20-%202018%2009%20-%20Final%20-%20Legal%20Services%20%28Part%20%29.pdf>>.

¹⁷⁸ See, eg, Liana Buchanan, ‘Community Lawyers, Law Reform and Systemic Change: Is the End in Sight?’ in Asher Flynn and Jacqueline Hodgson (eds), *Access to Justice and Legal Aid: Comparative Perspectives on Unmet Legal Need* (Hart, 2017) 141; Pascoe Pleasence et al, Law and Justice Foundation of New South Wales, *Reshaping Legal Assistance Services* (Discussion Paper, April 2014) 117 <[http://www.lawfoundation.net.au/ljf/site/articleIDs/D76E53BB842CB7B1CA257D7B000D5173/\\$file/Reshaping_legal_assistance_services_web.pdf](http://www.lawfoundation.net.au/ljf/site/articleIDs/D76E53BB842CB7B1CA257D7B000D5173/$file/Reshaping_legal_assistance_services_web.pdf)>; Department of Justice and Regulation (Vic), *Access to Justice Review* (Report and Recommendations (vol 2), 2016) 432 <<https://engage.vic.gov.au/accesstojustice>>.

stated that legal assistance providers play a key role in strategic law reform, policy and advocacy. The benefits may be felt by individuals impacted by a certain issue and, where law is clarified or enhanced, by the community more broadly.¹⁷⁹ Accordingly, the Productivity Commission noted its view that 'strategic advocacy and law reform that seeks to identify and remedy systemic issues, and so reduce the need for frontline services, should be a core activity' of legal assistance sector lawyers and organisations and that governments should provide funding for strategic advocacy and law reform activities.¹⁸⁰

However, it is not just legal assistance lawyers who undertake this role. Many members of the private legal profession also contribute significantly to law reform advocacy, often in a volunteer capacity. For example, Natalie Wade, founder and Principal of Equality Lawyers, recalls performing research, advocacy and law reform work on the subject of disability rights law in her 'spare time' alongside an earlier, fulltime job as a government lawyer.¹⁸¹ Wade highlights the 'incredible opportunity' for lawyers engaging in law reform to improve the legal framework and tools for disability rights lawyers and their clients.¹⁸²

Assisting systemic inquiries into key public policy issues

Systemic inquiries into key public policy issues, in particular Royal Commissions, have in the past decade become a critical component of investigating matters of public importance and identifying options for resolving key issues. At a national level, since 2011, Royal Commissions have been held on the issues of:

- Institutional Responses to Child Sexual Abuse;
- the Home Insulation Program;
- Trade Union Governance and Corruption;
- Protection and Detention of Children in the Northern Territory;
- Misconduct in the Banking, Superannuation and Financial Services Industry;
- Aged Care Quality and Safety;
- Violence, Abuse, Neglect and Exploitation of People with Disability; and
- National Natural Disaster Arrangements.

Michael Mintrom, Deidre O'Neill and Ruby O'Connor note that the evidence-gathering and investigation powers of Royal Commissions make them 'well-placed to 'speak truth to power'', with their potential to 'exercise influence in and around government' capable of 'shap[ing] the direction of public policy in a given domain for years, even, decades'.¹⁸³ The authors outline the significant policy purposes that Royal Commissions can satisfy as follows:

¹⁷⁹ Productivity Commission, *Access to Justice Arrangements* (Inquiry Report No 72, 2014) 708 <<https://www.pc.gov.au/inquiries/completed/access-justice/report/access-justice-volume1.pdf>>.

¹⁸⁰ Ibid 62, 708-713.

¹⁸¹ Natalie Wade, 'Disability rights advocacy and pro bono innovation' (2020) 4 *Pro Bono Voco* 1, 3-4 <<https://www.probonocentre.org.au/wp-content/uploads/2020/11/Pro-Bono-Voco-Nov-2020-FINAL.pdf>>.

¹⁸² Ibid 4.

¹⁸³ Michael Mintrom, Deidre O'Neill and Ruby O'Connor, 'Royal commissions and policy influence' (2020) *Australian Journal of Public Administration* <<https://onlinelibrary.wiley.com/doi/abs/10.1111/1467-8500.12441>>.

*They can provide domain-specific policy advice, investigate specific scandals or crises, or assure the public that government is taking a particular issue seriously...at least some recommendations of many royal commissions hold policy implications...*¹⁸⁴

Lawyers are heavily involved in Royal Commissions in assisting the Commissioners to undertake their role. Lawyers' involvement generally comes in two capacities, namely as 'counsel-assisting' the Royal Commission and as representatives of clients giving evidence before it.

A key aspect of many Royal Commissions is the giving of a voice to affected persons. Lawyers are often invaluable in supporting this process. Witnesses for a Royal Commission may require legal advice on matters ranging from privacy to confidentiality, and potential impacts on safety, employment, access to services and more.¹⁸⁵ Governments have recognised the importance of this legal function by providing funding for legal assistance sector organisations to provide specific services to assist witnesses appearing at Royal Commissions.

¹⁸⁴ Ibid.

¹⁸⁵ See, eg, Your Story Disability Legal Support, *Get legal help* (Web Page) <<https://yourstorydisabilitylegal.org.au/Get-legal-help>>.

Case Study



The role of lawyers in policy reform

Timothy Goodwin is a barrister practicing primarily in commercial and public law. Outside of his legal practice, Tim has served as a volunteer committee member across a broad range of community organisations, most recently on the boards of the Human Rights Law Centre, the Australian Research Alliance for Children and Youth, and the Sharing Stories Foundation. Tim's active involvement with the not-for-profit sector illustrates the profound contribution legal practitioners are able to make when volunteering within community sector, particularly in relation to assisting with governance and regulatory compliance matters which ultimately allows these organisations to be more effective in pursuing their charitable purposes.

Tim is also deeply engaged in systemic law reform activities, including through his role as Junior Counsel Assisting the Royal Commission into the Protection and Detention of Children in the Northern Territory. Commenting on the role of lawyers in identifying and responding to systemic challenges, Tim remarks that the best outcome for any royal commission is the building of evidence-based policy to solve the identified problem, and that the participation of lawyers in this process is critical given their ability to collect and analyse evidence. "The participation of lawyers in royal commissions and other processes designed to improve laws and policies remains an important part of facilitating recommendations for change that are practical and responsive to the crisis at hand", Tim notes.

Tim is a member of the Yuin people of the South East Coast of New South Wales. His Aboriginal community connection and long-lasting commitment to social justice has allowed him to contribute back to his community, not just through the provision of legal support and advocacy, but also as a mentor and role model to others that may wish to follow in his footsteps. "Diversity matters, and I feel it is extremely important to have Indigenous perspectives within the legal profession. This leads to innovative thinking and problem solving, and ultimately better laws, policies and outcomes for all Australians", Tim says.



Part 5: Social and community contribution

Lawyers are critical to the social capital of our communities

When considering the broad role of the legal profession, Associate Professor Jeremy Sarkin notes that lawyers can express and reinforce social values and ethical principles which should underlie the (in his view, much-needed) restructuring of the social order.¹⁸⁶ He continues by pointing out that while litigation and drafting are normally seen as the main functions of lawyers, ‘a broader and more important function entails service to the public and the nation as a whole’.¹⁸⁷

Kathleen Sullivan reflects further on the critical role that lawyers play in a democratic society, suggesting that ‘when lawyers help private parties or entities make deals, whether for a marriage, an initial public offering or a merger and acquisition of an established company, they engage in normative ordering—a kind of mini constitutionalism’.¹⁸⁸

Similarly, Brennan reminds us that lawyers are essential to the rule of law, noting that ‘the law regulates complex relationships – relationships between people and relationships between the people and the state. In a society governed by the rule of law, special knowledge and skills are needed to administer a subtle and elaborate system’.¹⁸⁹

In this sense, lawyers empower individuals and organisations to navigate often complex legal systems, frequently in times of extreme emotional or financial stress. The role of a lawyer as a support for their client in difficult times is perhaps best demonstrated in the family law context, where lawyers play a critical role in assisting parties through disputes which are often emotionally charged and require a high degree of sensitivity and empathy. Through this support, lawyers have the potential to change the lives of their clients. This is a weighty responsibility, and a source of tremendous pride for the legal profession.

Lawyers as community connectors

As discussed above in the context of pro bono assistance and the response of lawyers in times of crisis, there is a strong culture of volunteerism in the legal profession. While this is often manifested through the tremendous amount of formal pro bono work undertaken each year, there is a likely greater, but quieter, way in which this manifests – community contributions. Lawyers are frequent contributors to organisations such as community organisations, small and local businesses and charities.

¹⁸⁶ Jeremy Sarkin, ‘The role of the legal profession in the promotion and advancement of a human rights culture’ (1995) 21 *Commonwealth Law Bulletin* 1306 <<https://www.tandfonline.com/doi/abs/10.1080/03050718.1995.9986440?journalCode=rclb20>>.

¹⁸⁷ Ibid.

¹⁸⁸ Kathleen M Sullivan, ‘The Good That Lawyers Do’ (2000) 4 *Washington University Journal of Law and Policy* 7, 11 <https://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=1457&context=law_journal_law_policy>.

¹⁸⁹ Sir Gerard Brennan, ‘The Role of the Legal Profession in the Rule of Law’ (Speech, Supreme Court of Queensland, 31 August 2007) <<https://nswbar.asn.au/circulars/brennan.pdf>>.

When considering the role of lawyers in society, David Levi, Dana Remus and Abigail Frisch label them ‘connectors in their communities’.¹⁹⁰ In an appeal to the legal profession, the authors reinforce the role of lawyers as ‘interstitial figures with the knowledge, skill, and trust to help resolve disputes, move beyond stalemates, dispel tensions, and otherwise bring people and resources together in productive solutions’.¹⁹¹

The role of lawyers as community connectors and as promoters of social cohesion is perhaps most apparent in rural, regional and remote (**RRR**) settings. Simon Rice notes the following regarding the importance of lawyers in RRR communities:

*Lawyers have a recognised place in the civic identity and economic viability of rural communities: ‘well beyond the delivery of specific services to particular clients, [lawyers are] catalysts and supporters of a variety of types of innovation in communities, and ... contribut[e] to the fabric of respect for law that is at the heart of civil society’. As Martin et al observe, the loss of legal practitioners ‘is felt in the fabric of the community, as is the absence of a doctor, nurse, accountant or any of a number of other professionals that are part of the “normal” composition of more urban communities’ ...*¹⁹²

The *Justice Project Final Report* highlighted the ‘essential role’ played by legal practitioners in RRR areas in taking on legal aid, pro bono and voluntary work in their communities.¹⁹³ While close to 30 per cent of Australians live in RRR areas, only 10.5 per cent of the country’s solicitors practise outside an urban centre. Lawyers in RRR areas are, therefore, in high demand and asked to perform a wide range of functions. Indeed, a 2009 Law Council survey of RRR practitioners indicated more than 70 per cent of respondents undertook unpaid voluntary work within their area.¹⁹⁴

Lawyers who are members of marginalised or minority groups are also often highly regarded and frequently consulted advisers in their communities. This was highlighted in the Final Report of the *Review of the Indigenous Legal Assistance Program (ILAP) 2015-2020* with regard to the role of ATSILS, and in particular, Aboriginal and Torres Strait Islander lawyers in

¹⁹⁰ David Frank Levi, Dana Remus and Abigail Frisch, ‘Reclaiming the Role of Lawyers as Community Connectors’ (2019) 148 *Dædus* 30, 30 <<https://www.amacad.org/publication/reclaiming-role-lawyers-community-connectors>>.

¹⁹¹ *Ibid* 31.

¹⁹² Simon Rice, ‘Access to a Lawyer in Rural Australia: Thoughts on the Evidence We Need’ (2011) 16(1) *Deakin Law Review* 13, 26 <<http://www.austlii.edu.au/au/journals/DeakinLRev/2011/3.pdf>>.

¹⁹³ Law Council of Australia, *The Justice Project: Final Report – Rural, Regional and Remote (RRR) Australians Chapter* (August 2018) 29 <<https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Final%20Report/Rural%20Regional%20and%20Remote%20%28RRR%29%20Australians%20%28Part%201%29.pdf>>.

¹⁹⁴ Law Council of Australia and Law Institute of Victoria, *Report into the Rural, Regional and Remote Areas Lawyers Survey* (Report, July 2009) 6 <<https://www.lawcouncil.asn.au/publicassets/6dbc466f-d839-e711-93fb-005056be13b5/Report%20into%20the%20Rural,%20Regional%20and%20Remote%20Areas%20Lawyers%20Survey.pdf>>. See also Law Council of Australia, *The Justice Project: Final Report – Legal Services Chapter* (August 2018) 62 <<https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Final%20Report/18%20-%202018%2009%20-%20Final%20-%20Legal%20Services%20%28Part%202%29.pdf>>.

these services in engaging effectively with the communities in which they operate.¹⁹⁵ Key findings included that:

ATSILSs' delivery of culturally safe services is enabled by a high level of trust within Aboriginal and Torres Strait Islander communities, supported in turn by high levels of direct community engagement (often led by respected community members). At the client level, ATSILSs' staff are skilled at communicating legal concepts and processes to Aboriginal and Torres Strait Islander clients.

*Aboriginal and Torres Strait Islander staff within ATSILSs play an important role as cultural conduits between clients, court users and justice systems.*¹⁹⁶

...

*ATSILSs play a significant role in the community beyond the delivery of legal assistance services. ATSILSs are recognised as trusted Aboriginal and Torres Strait community controlled organisations and peak bodies who advocate for Aboriginal and Torres Strait Islander justice issues and the Aboriginal and Torres Strait Islander community generally.*¹⁹⁷

The importance of lawyers to community cohesion is difficult to measure – this value is often less formalised and therefore not easily quantified. However, even an informal review of participation in community-led boards or committees of management of local community organisations will no doubt provide some level of assurance that lawyers are highly engaged in their community and regularly apply their skills for a greater good.

In a society governed by the rule of law, where access to and understanding of legal rules can be closely linked to social cohesion, the role of the legal practitioner in a community is extremely valuable. Lawyers play a vital role in well-functioning societies and their often-hidden contributions make the profession a unique and integral part of the community.

¹⁹⁵ Cox Inall Ridgeway (commissioned by the Attorney-General's Department (Cth)), *Review of the Indigenous Legal Assistance Program (ILAP) 2015-2020* (Final Report, February 2019) <www.ag.gov.au/sites/default/files/2020-03/Review-of-the-ILAP.PDF>.

¹⁹⁶ *Ibid*, 72.

¹⁹⁷ *Ibid*, 121.

Case Study



Lawyers as connectors to complex systems

(with thanks to the Northern Territory Legal Aid Commission)

Peter lives in the Northern Territory. He has been the main carer for his children since they were little. Peter sought assistance to help resolve a potential dispute with the mother of their children.

“Their mother took me to the courts asking for the kids to live with her. The case was hard and it went for a long time”, Peter says.

“I had so much to deal with, in our whole family there was a lot of arguments and there was so many people telling me what to do, and taking care of the kids and dealing with the court matter. It was a lot to deal with.”

Upon reflection on the role his lawyer played in the proceedings, Peter states, “If I didn’t have a lawyer, I wouldn’t have known how to go about any of it. A lot was learning to be patient and understanding the system, that everyone gets a say and a fair go. That can mean that things drag out, but my lawyer had my back and once I told her what I wanted, I knew she was doing everything in her power to help and I could leave it with her.”

“It is good to have a law that can help us out and now that the matter is finished so has all the arguing in our family, my kids are safe and can spend time with both sides of our family and know their Aboriginal culture both ways. I am very grateful.”



Conclusion

The positive social, economic and policy contributions made by the legal profession are far-reaching and critically important, though not, at times, properly acknowledged or understood.

The legal profession's role in contributing to an effective legal system which promotes certainty is intrinsically linked to economic growth and confidence in key institutions. In this regard, the legal profession makes an important contribution to the strength of the Australian economy and is fundamental to preserving the rule of law.

A well-functioning legal sector is an integral part of the proper administration of justice, and the downstream cost savings to the justice system (and other public expenses) are only maximised with the involvement of the legal profession throughout the justice process.

Lawyers are also instrumental in facilitating access to justice for all members of the Australian community, particularly those facing economic or social disadvantage. The strength of Australia's pro bono and legal assistance sectors are centre points in this regard, and the value of these aspects of the profession are never more apparent than when communities face natural disaster or crisis.

Finally, the role of the legal profession in defending rights and providing a voice to those who might not otherwise be heard is critical. Using a multitude of tools, lawyers address systemic public policy issues, engage in advocacy for policy reform – especially in advancing the interests of those who are vulnerable – and promote accountability and transparency amongst our key institutions.

The many and varied contributions by the legal profession to the Australian economy, justice system, society and community, while often hidden, are nonetheless significant and worthy of acknowledgement. The Lawyer Project shines a light on this social value, and further exposes the unmistakable link between the legal profession and the ongoing health of the nation.



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