Law Council
OF AUSTRALIA

# 2025–26 Pre-Budget Submission

## The Treasury

**7 February 2025**

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# About the Law Council of Australia

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

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

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

Through this representation, the Law Council acts on behalf of more than 107,000 Australian lawyers.

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

The members of the Law Council Executive for 2025 are:

- Ms Juliana Warner, President
- Ms Tania Wolff, President-elect
- Ms Elizabeth Shearer, Treasurer
- Mr Lachlan Molesworth, Executive Member
- Mr Justin Stewart-Rattray, Executive Member
- Mr Ante Golem, Executive Member

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

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

# Acknowledgements

The Law Council of Australia is grateful for the contributions of the following Law Council Constituent Bodies in the preparation of this submission:

- the Law Institute of Victoria;
- the Law Society of the Australian Capital Territory; and
- the Law Society of New South Wales.

We also acknowledge the ongoing guidance of the following Advisory Committees and Working Groups in respect of the matters raised in this submission:

- the Access to Justice Committee;
- the Anti-Money Laundering and Counter-Terrorism Financing Working Group;
- the Indigenous Legal Issues Committee;
- the National Criminal Law Committee;
- the National Human Rights Committee;
- the National Security Law Working Group; and
- the Rural, Regional and Remote Committee.

# Executive summary

1. The Law Council of Australia is grateful for the opportunity to provide this submission to the Treasury for consideration in preparing the 2025–26 Federal **Budget**.

2. We acknowledge that, as the Federal Election is due to be held on or before 17 May 2025, the Budget is scheduled to be handed down on 25 March, instead of the usual handing down in mid-May. We expect that this timeframe will result in a truncated process for the Treasury in its preparation of the 2025–26 Budget.

3. Accordingly, this submission identifies, at a high level, various important areas in which increased investment by the Australian Government—necessary to improve access to justice outcomes and to promote and uphold the rule of law—should be directed. This submission also sets out opportunities for investment in a Federal Judicial Commission and a Federal Parole Authority. The potential role of a new Whistleblower Protection Authority should also be considered.

4. In upholding the democratic values, rule of law and the administration of justice—in Australia and the Pacific region—it is vital that the Australian Government invests in the institutions that currently underpin, or could enhance, the achievement of those fundamental ideals.

5. We have welcomed the Government reforms in the current term of Parliament, in key areas such as family law,[1] privacy law,[2] and administrative law.[3] We have especially welcomed instances where meaningful consultation with the Law Council has occurred as part of the reform process, as this typically allows us—by drawing upon the guidance and expertise of our membership—to identify where unintended consequences may arise, and where additional funding will be required in order to achieve the objective of particular reforms.

6. Similarly, we welcome the various significant funding investments that have been announced in recent years, including in respect of legal assistance services;[4] the Federal Circuit and Family Court (**FCFCOA**),[5] the implementation of the National Plan to End Violence against Women and Children 2022–2032,[6] the Independent National Security Legislation Monitor, and the establishment of the National Anti-Corruption Commission and the Administrative Review Tribunal. Nonetheless, key gaps remain. Accordingly, sufficient and sustained funding is required to ensure that the legal assistance sector, in addition to Federal agencies, Courts, Tribunals, and oversight bodies, is equipped to meet their substantial ongoing demands that may, in some cases, be exacerbated by the recent reforms.

7. For instance, several of the changes made to the *Family Law Act 1975* (Cth) by the *Family Law Amendment Act 2024* (Cth) are likely to have significant resourcing implications for the family law system and legal assistance sector. Examples include the new factor requiring courts to consider 'the effect of any family violence' in property

[1] *Family Law Amendment Act 2023* (Cth); *Family Law Amendment Act 2024* (Cth).
[2] *Privacy and Other Legislation Amendment Act 2024* (Cth).
[3] *Administrative Review Tribunal Act 2024* (Cth).
[4] See, e.g., The Hon Mark Dreyfus KC MP, *Additional support for Aboriginal and Torres Strait Islander Legal Services* (Media Release, 19 May 2023); The Hon Anthony Albanese MP and the Hon Mark Dreyfus KC MP, *National Access to Justice Partnership* (Media Release, 6 September 2024).
[5] See, e.g., Federal Circuit and Family Court of Australia, *2022-23 Commonwealth Budget provides $71.5 million to the Federal Circuit and Family Court of Australia for world-leading innovations* (Media Release, 26 October 2022).
[6] The Hon Anthony Albanese MP, *Meeting of National Cabinet* (Media Release, 6 September 2024).

settlements, and discrete considerations relating to companion animals.[7] It was concerning, in this context, that the originating Bill's explanatory materials stated that it 'will have nil financial impact'.[8] That is why we continue to call for Justice Impact Tests (alternatively, Legal Assistance Impact Tests) to accompany all new government proposals, as a means of identifying the downstream impacts of a policy initiative or reform measure, which can then inform funding decisions by the Government.[9]

8. Additional resourcing is also required to educate the public and promote compliance with newly established (or revised) Government frameworks and regimes, such as the impending changes to Australia's anti-money laundering and counter-terrorism financing regime.[10]

9. With respect to the funding of the Australian legal assistance sector, including to support the private legal profession to continue to provide legally aided assistance and representation, we recommend that:

- significant additional funding should be committed to legal services funded under the new National Access to Justice Partnership (**NAJP**), in line with the key funding recommendations in Dr Warren Mundy's Independent Review of the National Legal Assistance Partnership (**NLAP**);
- an appropriately resourced legal needs analysis should be implemented to better understand the legal needs of Australians, including priority groups experiencing disadvantage, legal issues, location and access at a population level;
- Commonwealth funding for Legal Aid Commissions should be increased to allow for rates to private practitioners to be aligned with court scales. Legal aid rates should be designed with the objective of ensuring sustainable participation by the profession in the delivery of access to justice to Australians in need;
- the Australian Government should provide additional funding to Legal Aid Commissions to ensure that Independent Children's Lawyers (**ICLs**) can perform the task for which they have been engaged, including meeting the additional requirements resulting from the implementation of the *Family Law Amendment Act 2023* (Cth); and
- the Australian Government should provide funding to facilitate the development of an Aboriginal and Torres Strait Islander Disability Framework and operational plan that would co-locate disability advocates within Aboriginal Community Controlled Organisations (**ACCO**s).

10. With respect to promoting the recruitment and retention of legal practitioners in rural, regional and remote (**RRR**) areas, we recommend that the Australian Government should establish a Higher Education Loan Program (**HELP**) debt relief scheme for legal practitioners who reside and work in eligible rural, remote, and very remote areas, to incentivise the recruitment and retention of qualified lawyers in underserviced RRR areas.

11. With respect to Australia's anti-money laundering and counter-terrorism financing regime, we recommend that:

- the Commonwealth provide an exemption fee for accessing relevant government documents necessary for compliance activities arising from

[7] See Law Council of Australia, *Family Law Amendment Bill 2024* (Submission, 9 October 2024) 9-11.
[8] Explanatory Memorandum, Family Law Amendment Bill 2024 (Cth) 7.
[9] See Law Council of Australia, *Independent Review of the National Legal Assistance Partnership* (Submission, 27 October 2023) 10-11.
[10] *Anti-Money Laundering and Counter-Terrorism Financing Amendment Act 2024* (Cth).

reforms to the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) (**AML/CTF Act**); and

- the Commonwealth actively monitor compliance costs with a full review no later than three years after the transition into compliance obligations.

12. With respect to achieving national leadership on youth justice system reform, we recommend that:

    - the Australian Government should allocate funding to facilitate the implementation of recommendations made in the National Children's Commissioner's *Help Way Earlier!* Report—especially the overarching recommendations for:
        - a National Taskforce;
        - a Cabinet Minister for Children;
        - a Ministerial Council for Child Wellbeing, reporting to National Cabinet; and
        - the implementation of treaty obligations concerning children into domestic law.

13. With respect to protecting the rights of individuals in detention, we recommend that the Australian Government must:

    - work with the states and territories to agree to funding arrangements to designate effective National Preventive Mechanisms consistent with Australia's Optional Protocol to the Convention against Torture (**OPCAT**) obligations, and provide additional resourcing as agreed; and
    - must work with the states and territories to agree to bridge the disconnect between Medicare and the corrections system as recommended in the National Review of First Nations Health Care in Prisons, and negotiate and fund arrangements with states and territories to ensure access to the Pharmaceutical Benefits Scheme (**PBS**) in places of detention.

14. With respect to supporting the rule of law, administration of justice, and integrity and accountability more broadly, we recommend that the Australian Government should:

    - take steps to ensure that the FCFCOA is appropriately resourced to administer the information sharing regime effectively, and to be able to work with states and territories to ensure protocols, training, and resourcing is available to promptly respond to information sharing orders;
    - allocate funding to ensure that all key FCFCOA information resources and forms are available in community languages;
    - establish, and adequately resource, a scheme to facilitate the coordination of litigation guardians, including the process by which they are nominated and appointed, and providing for an indemnity scheme for litigation guardians in family law matters;
    - provide funding to support the establishment of a Federal Judicial Commission to deal with any allegation of lack of competency, serious misconduct or corruption in the federal courts and tribunals. The Federal Judicial Commission should also support the provision of education, training and support for judicial officers;

- establish and adequately resource a Federal Parole Authority as an independent statutory body empowered to make parole decisions relating to individuals convicted of federal offences. The Federal Parole Authority should be supported by the establishment of an Office for the Management of Federal Offenders; and
- consider establishing and adequately resourcing a Whistleblower Protection Authority as an independent statutory body that operates in relation to whistleblower matters arising under any Commonwealth regime.

15. With respect to supporting access to legal information, we recommend that the Australian Government should provide substantial ongoing funding for the Australasian Legal Information Institute to support its provision of access to legal information at no cost.

16. With respect to the resourcing of agencies, we recommend that the Australian Government should:

    - ensure that the Australian Human Rights Commission (**AHRC**) is adequately resourced to effectively carry out its investigation, complaint and conciliation functions and its function of enhancing public education and human rights resources.
    - allocate adequate funding to the National Commission for Aboriginal and Torres Strait Islander Children and Young People to ensure that this body can work effectively to fulfil its mission and implement preventative measures to decrease the overrepresentation of Aboriginal and Torres Strait Islander young people in the criminal justice system.
    - allocate appropriate funding to ensure the Fair Work Commission (**FWC**) is sufficiently resourced to implement the workplace reform agenda, and to support dispute resolution through remote video conferencing.
    - provide additional funding for the Office of the Australian Information Commissioner (**OAIC**) to support the timely implementation of reforms to Australia's privacy regime.

17. With respect to providing support for independent legal professional bodies in the South Pacific, we recommend that the Australian Government should:

    - provide funding and other assistance to develop, support, and strengthen legal professional associations in the South Pacific; and
    - provide funding to support professional development and training for legal practitioners in the South Pacific.

18. We thank the Treasury for its engagement and look forward to the outcomes of the 2025–26 Federal Budget.

# Legal assistance funding

## Additional resources across the legal assistance sector

19. Under-investment in the justice system comes at a significant cost to individuals and the community. At a personal level, this underfunding might mean they cannot get help to resolve their family law disputes, remove themselves from harm, enforce their financial or employment rights, resolve a social security debt or a consumer law issue. More broadly, investment in legal assistance provides significant downstream savings, in areas such as health, employment and housing.

20. Legal assistance services around Australia—Legal Aid Commissions, Community Legal Centres, (including Women's Legal Services), Aboriginal and Torres Strait Islander Legal Services (**ATSILS**), and Family Violence Prevention Legal Services (**FVPLS**)—play an important, unique, and complementary role in providing legal help to people and communities across Australia.

21. In our October 2023 submission to the Independent Review of the NLAP, we emphasised that the baseline level of Commonwealth funding for much of the legal assistance sector, currently provided in the NLAP, is insufficient.[11] The current Commonwealth funding is approximately half of the level required to adequately meet demand on the sector.[12] This funding arrangement cannot satisfactorily meet the needs of the roughly 13 per cent of Australians who live below the poverty line, let alone other Australians who increasingly need, but cannot afford, legal services. Currently, it is established that at best, only eight per cent of Australian households would meet the means test for legal aid.[13]

22. Dr Warren Mundy's Independent Review of the NLAP Final Report identified systemic and widespread failings under the current arrangements under the NLAP, that have serious consequences for some of the most vulnerable in our community who require legal assistance and representation.[14] Dr Mundy noted that:[15]

> *there is significant unmet legal need in Australia, and that funding from all sources is inadequate to address the legal needs of those people the legal assistance sector is meant to support.*

23. The Government has announced that a new NAJP will commence on 1 July 2025.[16] Whilst the NAJP includes important additional and ongoing funding across all legal services, this increase is far from what is required to rectify significant shortfalls and to address the existing funding pressures on the legal assistance sector. After years of stagnant Commonwealth funding in this area, the new funding arrangement under the NAJP remains well below the quantum recommended by Dr Mundy. The funding

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[11] See Law Council of Australia, *Independent Review of the National Legal Assistance Partnership* (Submission, 27 October 2023); *2024-25 Pre-Budget Submission* (Submission, 25 January 2024) 9-11.
[12] Law Council of Australia, *Independent Review of the National Legal Assistance Partnership* (Submission, 27 October 2023) 13.
[13] Impact Economics and Policy, *Justice on the Brink: Stronger Legal Aid for a Better Legal System* (Report prepared for National Legal Aid, November 2023) 15.
[14] Dr Warren Mundy, *Independent Review of the National Legal Assistance Partnership 2020-25* (Final Report, March 2024) 230.
[15] Ibid 230.
[16] The Hon Anthony Albanese MP and the Hon Mark Dreyfus KC MP, *National Access to Justice Partnership* (Media Release, 6 September 2024).

quantum will not be sufficient to meet existing levels of legal need, nor the requirements of the National Agreement on Closing the Gap.[17]

24. The NAJP is also not a substitute for a formal, public, response that outlines the Government's position on each of Dr Mundy's 39 recommendations.[18]

25. We are of the firm view that significantly increased funding is needed to address the shortcomings of the new NJAP and, especially, to facilitate the key funding recommendations contained in the Independent Review of the NLAP Final Report, including Dr Mundy's recommendation of $459 million per annum, shared by the Commonwealth (approximately 60 per cent), state and territory governments to increase funding for civil and family law matters.[19]

26. The Australian Government has a responsibility to adequately fund legal assistance. We acknowledge the current economic challenges faced at the present time, both domestically and globally. However, it is in tough economic times that legal assistance services are most vital and should be prioritised.

**Recommendation:**

- **Significant additional funding should be committed to legal services funded under the new NAJP, in line with the key funding recommendations in Dr Warren Mundy's Independent Review of the NLAP.**

## Legal needs survey

27. The first recommendation arising from the Independent Review of the NLAP was that the Australian Bureau of Statistics undertake a national legal needs survey at five-yearly intervals, which includes the collection of data to measure both met and unmet legal need.[20]

28. We agree that an appropriately resourced legal needs analysis should be developed and implemented to better understand the legal needs of Australians including priority groups experiencing disadvantage, legal issues, location and access at a population level.[21] Such an analysis must provide for national and targeted surveys on legal need, and the extent to which it is met or unmet. A current, reliable national analysis is needed to drive evidence-based responses.

**Recommendation:**

- **An appropriately resourced legal needs analysis should be implemented to better understand the legal needs of Australians, including priority groups experiencing disadvantage, legal issues, location and access at a population level.**

[17] Australian Government, *National Agreement on Closing the Gap* (Online, July 2020).
[18] See Law Council of Australia, *New NAJP welcome, but misses many access to justice needs* (Media Release, 26 November 2024).
[19] Dr Warren Mundy, *Independent Review of the National Legal Assistance Partnership 2020-25* (Final Report, March 2024) 58 [Recommendation 5].
[20] Ibid 45 [Recommendation 1].
[21] See Law Council of Australia, *Independent Review of the National Legal Assistance Partnership* (Submission, 27 October 2023) 8-10.

## Private practitioner rates for legal aid work

29. The private legal sector plays a critical role in delivering high-quality services under the publicly funded mixed model of legal services delivery. This model—that has been recognised by the Productivity Commission and independent reviewers as critical to sustainable service delivery nationally[22]—allows Legal Aid Commissions to draw on both in-house expertise and the experience, acumen and geographic reach of the private profession

30. However, the rates awarded to private practitioners to carry out legally aided work under a grant of aid are so low that legal aid work is rapidly becoming unsustainable. It is critical that adequate funding is provided to the legal assistance sector to be passed on to the private profession to perform legal aid work.[23] While it is not expected that legal aid payments to the private profession should match privately agreed rates, they should be set at a fair and reasonable level that supports practitioners to sustain an effective and viable legal aid practice.

31. We are particularly concerned about the low rates paid under a grant of assistance to the private profession for the delivery of legal assistance services under the current model, which risks much of the private profession's ongoing participation in the delivery of publicly funded legal assistance. A significant increase of funding is required for Legal Aid Commissions to be able to increase rates of pay to a level that allows for this model to be sustainable into the future.

32. The importance of publicly funded legal representation cannot be underestimated. At present, inadequate, inequitable, and inconsistent Commonwealth funding of legal services is operating as a significant disincentive for experienced and appropriately qualified legal practitioners to accept legal aid work, particularly in RRR areas. This, in turn, is reducing the quality of legal services provided to some of the nation's most disadvantaged and marginalised people. We are anecdotally aware of entire regions in which individuals and families are missing out, given this supply failure. The provision of legal aid helps to protect the safety and rights of individuals, and greatly enhances their capacity to rebuild their lives and care for their children.

33. Dr Mundy's NLAP Review Report recommended $46 million in Commonwealth funding, and $337 million in state/territory funding, to allow grants of legal aid to private practitioners to be set at the same level as provided for in the court scales where the matter is heard.[24]

34. We are highly supportive of greater transparency and certainty with respect to rates paid to private legal practitioners undertaking publicly funded matters. In doing so, there is merit in referencing legal aid rates to scales of costs arrangements in line with the Recommendation 18 in the NLAP Review Report. While these scales of costs will typically fall short of what is the market rate for legal services, they provide benchmarks that are subjected to regular review, and adjusted according to external factors.

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[22] See Productivity Commission, *Access to Justice Arrangements* (Inquiry Report 72, 2014) 724-726; Dr Warren Mundy, *Independent Review of the National Legal Assistance Partnership 2020-25* (Final Report, March 2024) 136-137.
[23] See Law Council of Australia, *Independent Review of the National Legal Assistance Partnership* (Submission, 27 October 2023) 16-19.
[24] Dr Warren Mundy, *Independent Review of the National Legal Assistance Partnership 2020-25* (Final Report, March 2024) 139 [Recommendation 18].

**Recommendation:**

- **Commonwealth funding for Legal Aid Commissions should be increased to allow for rates to private practitioners to be aligned with court scales. Legal aid rates should be designed with the objective of ensuring sustainable participation by the profession in the delivery of access to justice to Australians in need.**

## Independent Children's Lawyers

35. A significant contribution made by private practitioners undertaking legal aid funded work is the provision of ICL services. Under section 68L of the *Family Law Act 1975* (Cth), a court can appoint an ICL to represent and promote the best interests of a child in family law proceedings. In 2022–23, approximately 5,000 grants of legal aid were approved for the appointment of an ICL.[25]

36. We acknowledge the significant contributions made by ICLs to the practice of family law. The importance of well-trained and properly focused ICLs cannot be overstated. Without additional funding, it is likely that fewer practitioners will be in a position to undertake ICL work.

37. The *Family Law Amendment Act 2023* (Cth) includes several measures regarding the roles of ICLs, including a requirement for ICLs to meet with a child, unless exceptional circumstances apply, and to give the child an opportunity to express a view.[26] Whilst we supported these new measures, in principle, when they were being considered by the Parliament in 2023,[27] we maintain the view that additional funding is required to ensure that ICLs can meet the additional requirements.

38. We continue to hold strong concerns that the current grants for funding of ICL appointments are limited and practitioners acting as ICLs are not appropriately remunerated for their expertise, time and travel. As noted by National Legal Aid in its submission to Dr Mundy, resourcing pressures 'have reached a critical point such that recruitment and retention are now significant and immediate concerns'.[28]

**Recommendation:**

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

[25] National Legal Aid, Independent Children's Lawyers submission to the Independent Review of the National Legal Assistance Partnership (24 October 2023) 3.
[26] *Family Law Amendment Act 2023* (Cth) sch 4.
[27] Law Council of Australia, *Family Law Amendment Bill 2023* (Submission, 3 July 2023) 38-44.
[28] National Legal Aid, Independent Children's Lawyers submission to the Independent Review of the National Legal Assistance Partnership (24 October 2023) 1.

## Co-location of disability advocates within Aboriginal Community Controlled Organisations

39. The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (**Disability Royal Commission**) noted in its Final Report that the data it received on the proportion of Aboriginal and Torres Strait Islander people with cognitive disability in custody, particularly in youth detention, exposes 'a hidden national crisis'.[29] The Final Report called for the need for care and support from ACCOs to prevent people with disability entering the criminal justice system.[30]

40. We support the Commonwealth, State and Territory governments working in partnership with ATSILS to develop an Aboriginal and Torres Strait Islander Disability Framework and operational plan that would co-locate disability advocates within ACCOs. This initiative was recommended by the National Aboriginal and Torres Strait Islander Legal Services in its submission to the NLAP Review.[31] This is a recommendation that we continue to support.[32]

**Recommendation:**

- **The Australian Government should provide funding to facilitate the development of an Aboriginal and Torres Strait Islander Disability Framework and operational plan that would co-locate disability advocates within ACCOs.**

# Recruitment and retention of legal practitioners in RRR areas

41. Access to justice requires lawyers to be physically based throughout our communities to provide essential in-person services and build trust with those who live there. More broadly, lawyers in RRR areas—particularly small towns—are often the mainstay of many vital community and service organisations, and are crucial to the longevity and connectedness of their communities.

42. While approximately one third of the Australian population lives outside of our capital cities,[33] less than 10 per cent of lawyers practise in a RRR location.[34] This workforce shortfall adversely impacts access to justice for people who live in these underserviced regions. The anticipated financial and logistical barriers of relocating to a RRR area can deter an otherwise willing individual from pursuing this option.

43. We strongly support initiatives to incentivise the recruitment and retention of lawyers in RRR areas. In doing so, we recognise the significant role that financial incentives can play in facilitating the recruitment and retention of professionals in RRR areas, particularly for the legal assistance sector. This is consistent with findings from the Regional Australia Institute in 2023 that two in five urban workers would be convinced to move to an RRR area if a financial incentive was involved.[35]

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[29] Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability Final Report, *Criminal Justice and People with Disability* (Volume 8, September 2023) 4.
[30] Ibid.
[31] National Aboriginal and Torres Strait Islander Legal Services, *Submission to the Independent Review of the National Legal Assistance Partnership 2020-25* (Submission, 24 October 2023) 10 [Recommendation 17].
[32] See Law Council of Australia, *2024-25 Pre-Budget Submission* (Submission, 25 January 2024) 15.
[33] Australian Bureau of Statistics, *Census 2021* (Web Page, June 2022).
[34] Urbis, 2022 National Profile of Solicitors, (Report for the Law Society of New South Wales, April 2023) 3.
[35] Regional Australia Institute, *Nearly half of all urban workers would move to regional Australia for a better salary* (Media Release, 4 July 2023).

44. We are continuing to seek the introduction of a targeted HELP debt reduction and indexation relief initiative. Under this scheme, qualified lawyers who both reside and work in an eligible rural, remote, or very remote area will be able to apply for a reduction of their outstanding HELP debt after working in that area for a requisite period, in addition to the waiving of annual indexation of their debt during that period. We suggest that this period should be at least two years. Further details of our proposal are set out in our 2023 Position Paper.[36]

45. An iteration of the RRR debt relief scheme has been recommended (and costed) by Dr Mundy in his NLAP Review Report.[37] Whilst the scope of Dr Mundy's recommendation is more limited than the scheme proposed in our Position Paper, we accept that it represents a sound starting point for the creation of incentives to meet the demand for legal services in RRR areas.

**Recommendation:**

- **The Australian Government should establish a HELP debt relief scheme for legal practitioners who reside and work in eligible rural, remote, and very remote areas, to incentivise the recruitment and retention of qualified lawyers in underserviced RRR areas.**

# Anti-Money Laundering and Counter-Terrorism Financing

46. Recent amendments to the AML/CTF Act have extended the scope of AML/CTF obligations to the legal profession.[38]

47. We are concerned about the impact that the introduction of these regulatory changes will have on the legal profession, especially as the vast majority of legal practices are sole traders or small to mid-sized businesses.[39] As set out in detail in our October 2024 submission to the Senate inquiry into the AML/CTF Amendment Bill, the costs of complying with these new obligations will be unduly high, especially for sole practitioners and small and medium sized firms.[40]

48. Consideration should be given to reduce compliance costs by, for example, making access to information held by the Australian Securities and Investment Commission (**ASIC**) freely available for legal practitioners registered with the Australian Transaction Report and Analysis Centre (**AUSTRAC**) undertaking compliance activities under the AML/CTF Act. Currently, ASIC charges fees for accessing many of its databases, including company director information that will likely be needed to verify company directors, shareholdings and beneficial owners' identification.

49. Further, as set out in our October 2024 submission, we recommend that the application of the AML regime and its costs be the subject of monitoring, with a full review of compliance costs in 2028/2029.

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[36] Law Council of Australia, *HELP debt reduction and indexation relief for legal practitioners working in rural, regional and remote locations* (Position Paper, December 2023).
[37] Dr Warren Mundy, *Independent Review of the National Legal Assistance Partnership 2020-25* (Final Report, March 2024) 175 [Recommendation 26].
[38] *Anti-Money Laundering and Counter-Terrorism Financing Amendment Act 2024* (Cth).
[39] Urbis, 2022 National Profile of Solicitors, (Report for the Law Society of New South Wales, April 2023) 29; see also Law Council of Australia, *Modernising Australia's anti-money laundering and counter-terrorism financing regime* (Submission, 27 June 2023) 23-25.
[40] Law Council of Australia, *Inquiry into the Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2024* (Submission, 16 October 2024) 22-26.

**Recommendation:**

- **The Commonwealth provide an exemption fee for accessing relevant government documents necessary for compliance activities arising from reforms to the AML/CTF Act.**
- **The Commonwealth actively monitor compliance costs with a full review no later than three years after the transition into compliance obligations.**

# National leadership on youth justice system reform

50. Child and youth justice policy responses across Australia are inconsistent and not compliant with Australia's obligations under international law.

51. As observed by National Children's Commissioner, Anne Hollonds, in her 2024 Report, *Help Way Earlier! How Australia can transform child justice to improve safety and wellbeing*, Australia has international obligations, including under the Convention on the Rights of the Child,[41] to people under 18 years.[42] Some of the most important principles contained in that instrument are that policies affecting children should be formulated with 'special safeguards and care' due to children's physical and mental immaturity,[43] and the best interests of the child as a primary consideration, and further that detention should only ever be a last resort as a punishment for children.[44] These principles are not being respected in most Australian jurisdictions today.[45]

52. The Commissioner reported that Australia's responses to child justice have been piecemeal, uncoordinated and inadequate, and that current approaches to offending by children have been ineffective and not supported by evidence. The Commissioner called for a nationally coordinated, child rights-based approach to reform.[46]

53. Despite ample research into alternative pathways for vulnerable offenders,[47] there has been no coordinated national effort to promote these pathways and demonstrate that they are likely to be both more effective and more consistent with Australia's human rights obligations. The constitutional division of responsibilities between the Commonwealth and the states and territories in this area cannot justify further inaction in this regard.[48]

54. We are all responsible for ensuring the safety and dignity of children in our society, and a national approach is needed in which the Australian Government works with the states and territories to achieve the necessary reforms in concert, in line with their respective roles and responsibilities. The emphasis must be on ensuring that children are connected with their families, education and culture. They must be safe, fed,

[41] Convention on the Rights of the Child, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990).
[42] National Children's Commissioner (Australian Human Rights Commission), *Help Way Earlier! How Australia can transform child justice to improve safety and wellbeing* (Report, September 2024) 4.
[43] Convention on the Rights of the Child, Preamble.
[44] Ibid art 37(b).
[45] See Law Council of Australia, *Australia's youth justice and incarceration system* (Submission, 22 October 2024).
[46] National Children's Commissioner (Australian Human Rights Commission), *Help Way Earlier! How Australia can transform child justice to improve safety and wellbeing* (Report, September 2024).
[47] See Law Council of Australia, *Australia's youth justice and incarceration system* (Submission, 22 October 2024).
[48] Ibid.

housed, healthy, active and their wellbeing prioritised. This in turn, will contribute to community safety.[49]

**Recommendations:**

- **The Australian Government should allocate funding to facilitate the implementation of recommendations made in the National Children's Commissioner's *Help Way Earlier!* Report—especially the overarching recommendations for:**
  - **a National Taskforce;**
  - **a Cabinet Minister for Children;**
  - **a Ministerial Council for Child Wellbeing, reporting to National Cabinet; and**
  - **the implementation of treaty obligations concerning children into domestic law**.

# Protecting the rights of individuals in detention

## Optional Protocol to the Convention Against Torture

55. We remain concerned about the state of Australia's implementation of the OPCAT, a treaty that the Australian Government ratified in 2017.

56. As a party to the OPCAT,[50] Australia is required to:

- establish National Preventive Mechanisms, which examine the treatment of persons deprived of their liberty in places of detention and make recommendations to the relevant authorities with the aim of improving the treatment and conditions of such persons;[51] and
- make available the necessary resources for the functioning of National Preventive Mechanisms.[52]

57. National Preventive Mechanisms must be established in all domestic jurisdictions (the Commonwealth and states and territories). However, not all states and territories have established them—we understand that a key obstacle for several states and territories is a continued lack of intergovernmental agreement on funding.[53]

58. The December 2023 visit report of the United Nations **Subcommittee** on Prevention of Torture makes it clear that detention facilities around Australia are in urgent need

[49] Ibid.
[50] UN General Assembly, *Optional Protocol to the Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment*, 9 January 2003, A/RES/57/199.
[51] Ibid arts 17 and 19.
[52] Ibid art 18(2).
[53] See, e.g., the Hon. Mark Speakman, *Budget Estimates 2021 Questions Taken on Notice Portfolio Committee No. 5—Legal Affairs* (26 March 2021) Question 14, 35; the Hon. Elise Archer, *House of Assembly Estimates Committee B* (8 September 2021) 25; Jack Latimore*, Deaths in custody oversight missing as government deadline passes*, The Sydney Morning Herald (Online, 20 January 2022); Parliament of Victoria Legislative Council Legal and Social Issues Committee, *Inquiry into Victoria's criminal justice system: Volume 2* (Report, March 2022) 630; The Hon. Leanne Linnard, Queensland Parliament. Record of Proceedings (26 May 2022) 1479.

of better oversight and accountability mechanisms.[54] As recommended by the Subcommittee, Australian governments collectively need to step up their efforts to establish a comprehensive nationwide National Preventive Mechanism network, backed by appropriate legislation and adequately funded to fulfil its role under the OPCAT.[55]

59. We acknowledge that the task of ensuring OPCAT compliance across Australia is complex and requires a negotiated outcome, involving the states and territories. Nonetheless, it is vitally important that the Australian Government lead these efforts as a priority. The forthcoming Budget provides an opportunity for the Australian Government to make a financial contribution to the expeditious implementation of all of Australia's obligations under the OPCAT.

**Recommendation:**

- **The Australian Government must work with the states and territories to agree to funding arrangements to designate effective National Preventive Mechanisms consistent with Australia's OPCAT obligations, and provide additional resourcing as agreed.**

## Access to healthcare systems

60. Individuals who are in custody (prison and youth detention) 'experience profound health disparities relative to those who have not been incarcerated, with a disproportionate burden of mental illness, chronic and communicable diseases'.[56] Rule 24 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), to which Australia has committed, states:[57]

> 1. *The provision of health care for prisoners is a State responsibility. Prisoners should enjoy the same standards of health care that are available in the community, and should have access to necessary health-care services free of charge without discrimination on the grounds of their legal status.*
>
> 2. *Health-care services should be organized in close relationship to the general public health administration and in a way that ensures continuity of treatment and care, including for HIV, tuberculosis and other infectious diseases, as well as for drug dependence.*

61. However, despite the above commitments, individuals in custody in Australia are unable to access Medicare, with healthcare services in prisons funded by state and territory governments. The legal basis for detainees being excluded from Medicare is found in section 19(2) of the *Health Insurance Act 1973* (Cth), where 'a Medicare benefit is not payable in respect of a professional service that has been rendered by, or on behalf of, or under an arrangement with' any government entity (Commonwealth, state, territory, or any other authority established by federal, state or territory law), unless directed by the Minister.

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[54] United Nations Subcommittee on Prevention of Torture, Visit to Australia undertaken from 16 to 23 October 2022: recommendations and observations addressed to the State party, UN Doc CAT/OP/AUS/ROSP/1, 20 December 2023.
[55] Ibid 3-5.
[56] Tessa M Plueckhahn et al., 'Are some more equal than others? Challenging the basis for prisoners' exclusion from Medicare' (2015) 203(9) *Medical Journal of Australia* 359.
[57] *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*, GA Res 70/175 , UN Doc A/RES/70/175 (adopted 17 December 2015) r 24.

62. As has been noted by the Australian Medical Association, this legislative provision is 'premised on the assumption that an equivalence of health service is being provided by jurisdictions in custodial settings'.[58] However, the current system has resulted in the provision of health services in prisons by state and territory governments, largely funded from limited justice budgets and often below a standard of equivalence with other Australians. The inability to access adequate healthcare through Medicare while in custody can contribute to poorer health outcomes, spread of diseases, and deaths in custody.[59]

63. We have long advocated for the Australian Government to ensure that detainees in each state and territory receive the same level of healthcare that members of the general public would receive under the public health system.[60] We were pleased to see that, in 2022, the Health Ministers committed to improving continuity of care in hospitals and prisons by commissioning a review into the relationship between the health and justice systems to identify barriers and areas for reform. Relevantly, Nous Group was engaged by the Australian Department of Health and Aged Care to undertake an independent review into the specific challenges that First Nations people experience in the justice and health context.

64. On 6 December 2024, the Final Report of the review was handed down, and included a discussion of access to the Medical Benefits Scheme (**MBS**) and the PBS in custodial settings.[61] The Final Report recommended that the Australian Government should:

    (a) **explore options to access Medicare and MBS**: to bridge the disconnect between Medicare and the corrections system, the Australian Government should explore limited activation of MBS in places of detention through section 19(2) of the Health Insurance Act exemption with conditions;[62]

    (b) **negotiate agreements with states and territories for access to the PBS in places of detention:** there may be whole-of-system savings if the states and territories can access the reduced purchase prices that the Australian Government can achieve through its PBS.[63]

65. We understand that the Health Ministers have endorsed the Final Report,[64] but did not comment on the recommendations in relation to MBS and PBS access in custodial settings. Nonetheless, the forthcoming Budget provides an opportunity for the Australian Government to work with the states and territories regarding access to the MBS and PBS in custodial settings.

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[58] Australian Medical Association, *Health Care in Custodial Settings* (Position Statement, 2023) 4.
[59] Community Justice Coalition, *Medicare access for prisoners* (Web Page, 24 October 2022) 9.
[60] See Law Council of Australia, *Call to Parties: All Australians deserve access to justice* (2019), 15; *Draft Report–Review of the National Agreement on Closing the Gap* (Submission, 27 October 2023) 19.
[61] Nous Group (on behalf of the Australian Department of Health and Aged Care), National Review of First Nations Health Care in Prisons: Final Report, (6 December 2024).
[62] Ibid 47.
[63] Ibid 48.
[64] Health Ministers' Joint Response to the National Review of First Nations Health Care in Prisons (Online, December 2024) 2.

**Recommendation:**

- **The Australian Government must work with the states and territories to agree to bridge the disconnect between Medicare and the corrections system as recommended in the National Review of First Nations Health Care in Prisons and negotiate and fund arrangements with states and territories to ensure access to the PBS in places of detention.**

# Supporting the rule of law, administration of justice, and accountability and integrity

## Federal Courts and Tribunals

### Information sharing framework in the FCFCOA

66. The *Family Law (Information Sharing) Act 2023* (Cth) and supporting regulations set out a framework that enables the FCFCOA to make orders requesting prescribed state and territory government agencies provide information and documents relevant to the risk of abuse, neglect, or family violence in family law proceedings.

67. We note that in responding to these orders, agencies are to be guided by high-level information sharing safeguards, prescribed in the regulations. In large part, the efficacy of this scheme will depend on the FCFCOA being adequately resourced to administer the scheme, in addition to relevant agencies being appropriately resourced to respond to Court orders effectively.

**Recommendation:**

- **The Australian Government should take steps to ensure that the FCFCOA is appropriately resourced to administer the information sharing regime effectively, and to be able to work with states and territories to ensure protocols, training, and resourcing is available to promptly respond to information sharing orders.**

### FCFCOA information resources

68. We understand that the FCFCOA is undertaking to produce key information resources in various languages. The provision of key information and materials—such as Practice Directions—in all major community languages, using trauma-informed, culturally appropriate language, is a significant access to justice issue, particularly for self-represented litigants in the family law jurisdiction.

69. The Government should liaise closely with the FCFCOA on this project and allocate funding to expand the FCFCOA translation project to ensure all key information resources and forms are available in community languages.

**Recommendation:**

- **The Australian Government should allocate funding to ensure that all key FCFCOA information resources and forms are available in community languages.**

### Litigation guardians in the FCFCOA

70. Litigation guardians are appointed by the FCFCOA in matters where a party lacks legal capacity to provide instructions, for example, due to cognitive disability. However, we understand that a longstanding issue is the difficulty in sourcing litigation guardians in the FCFCOA.

71. We understand that our Constituent Bodies regularly receive requests from their members, the FCFCOA, and the Attorney-General's Department to refer practitioners who are willing to act as litigation guardians in appropriate family law matters, though noting that litigation guardians are not required to be legal practitioners.

72. Several state governments have established administrative frameworks that provide remuneration and indemnity from liability for litigation guardians. For example, in New South Wales (**NSW**), the NSW Government provides for a coordinator of the Guardian ad Litem panel (including coordinating the appointment process). Further, members of the Guardian ad Litem panel who are appointed under the *Children and Young Persons (Care and Protection) Act 1998* (NSW) to appear in the Children's Court are exempt from any personal action or liability if they act in good faith. No such framework exists in the federal jurisdiction.

**Recommendation:**

- **The Australian Government should establish, and adequately resource, a scheme to facilitate the coordination of litigation guardians, including the process by which they are nominated and appointed, and providing for an indemnity scheme for litigation guardians in family law matters.**

## Establishment of new bodies

### Federal Judicial Commission

73. We continue to support the establishment of an appropriately constituted and properly resourced Federal Judicial Commission, consistent with the design principles set out in our Policy Statement that was most recently updated in March 2023.[65]

74. It is essential to the promotion of the rule of law and the Australian constitutional system that there be a strong, independent, and transparent judiciary. It is, therefore, critical that there is a well-understood means of fairly and punctually addressing complaints about the federal judiciary in an independent and structured manner. We strongly support the establishment of a Federal Judicial Commission to perform this function.

75. The role of a Federal Judicial Commission should also extend to providing resources, support and education to the judiciary, including providing guidance on acceptable standards of judicial conduct. Such a function would facilitate the Federal Judicial Commission— and therefore, the federal judiciary—to learn from complaints, to effect improvements in processes, to further equip judicial officers with the necessary

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

knowledge and skills, and to identify circumstances requiring additional pastoral care.[66]

76. In the 2022–23 Budget, the Australian Government committed to scoping the merits and design of a Federal Judicial Commission.[67] This was a welcome development and, in January 2023, the Judicial Commission Taskforce within the Attorney-General's Department released a Discussion Paper entitled 'Scoping the establishment of a Federal Judicial Commission'.[68] We were pleased to provide a detailed submission in response,[69] but it is unclear whether further progress has been made on this matter. We note, with some concern, that (as at the time of writing) the Judicial Commission Taskforce no longer appears in the Attorney-General's Department's Organisational Chart.[70]

77. The establishment of a Federal Judicial Commission will be an important part of the developing integrity landscape at the Commonwealth level. This body should be established as soon as practicable, following a period of meaningful public consultation on any draft legislation. Accordingly, the Australian Government should include appropriate funding to support the establishment of such body in the upcoming Budget.

**Recommendation:**

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

## Federal Parole Authority

78. Under Part 1B of the *Crimes Act 1914* (Cth), all parole applications for federal offenders are determined by the Commonwealth Attorney-General. The Attorney-General is supported by an administrative unit within the Attorney-General's Department known as the Commonwealth Parole Office.

79. Decisions affecting the liberty of individuals should be made in a transparent, accountable, and independent manner. Parole, as a form of conditional release of offenders into the community to serve part of their sentence, engages the basic right of individuals to their liberty.

80. Funding should be allocated to support the establishment of a Federal Parole Authority as an independent statutory body, empowered to make parole decisions. It should work within a transparent institutional framework, which would assist in improving the administration of justice at the Commonwealth level.

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[66] Australian Law Reform Commission, Without Fear or Favour: Judicial Impartiality and the Law on Bias (Final Report, December 2021) 335-336.
[67] Hon Mark Dreyfus KC MP, Attorney General, *Investing in Integrity, Human Rights and Safety* (Media Release, 25 October 2022).
[68] Attorney-General's Department, *Scoping the establishment of a federal judicial commission* (Discussion Paper, January 2023).
[69] Law Council of Australia, *Scoping the establishment of a federal judicial commission* (Submission, 8 March 2023).
[70] Attorney-General's Department, *Attorney-General's Department Organisational Structure* (Web Page, January 2025).

81. To ensure its independence, the Federal Parole Authority should be established as an agency separate to the current Commonwealth Parole Office. It should be overseen by an agency head who is appointed by the Governor-General (subject to statutory protections to ensure their independence and expertise) and have staff who are employed directly under the governing Act.

82. Consistent with the key design principles set out in our November 2022 Position Paper,[71] the Federal Parole Authority should have the resources and expertise to:

- properly afford prisoners procedural fairness, including providing all relevant material and adequate time to respond to notices of intention to refuse parole; and
- make decisions that give due weight to all relevant considerations as required by the Crimes Act.

83. The successful functioning of a Federal Parole Authority will be determined by the extent to which it is underpinned by four key design principles: independence, transparency, procedural fairness, and accountability.

84. To better support the effectiveness of a Federal Parole Authority, an Office for the Management of Federal Offenders should established. Importantly, the functions of that Office should include maintaining an up-to-date case management database of all federal offenders and a victim notification register.

85. In addition, the establishment of an independent Federal Parole Authority should be accompanied by the necessary investment in additional legal assistance funding to assist federal prisoners to respond to notices of intent to refuse parole, to represent them at any hearing, and if necessary, to challenge adverse decisions.

**Recommendation:**

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

## Whistleblower Protection Authority

86. Whistleblowing laws in Australia are a complicated web of overlapping and interconnecting laws that also leave multiple gaps. The system can be highly difficult to navigate and is a significant impediment to uncovering wrongdoing and unethical behaviour. As such, we strongly support significant reform to simplify and clarify whistleblowing laws in Australia and provide improved access to necessary support and guidance for whistleblowers.

87. In February 2017, the Parliamentary Joint Committee on Corporations and Financial Services released its Report, *Whistleblower Protections*, and recommended the establishment of a Whistleblower Protection Authority.[72] Since the release of that Report, we have consistently expressed strong support for the establishment of a

[71] Law Council of Australia, *Principles underpinning a federal parole authority* (Position Paper, November 2022) 3.

[72] Parliamentary Joint Committee on Corporations and Financial Services, Parliament of Australia, *Whistleblower Protections* (Report, September 2017) [Recommendation 12.1].

comprehensive whistleblower regime, including broad support for the creation of a Whistleblower Protection Authority.[73] A Whistleblower Protection Authority that is established at the federal level should operate in relation to whistleblower matters arising under any Commonwealth regime.

88. We consider there to be particular merit in a readily identifiable 'clearinghouse' model of a Whistleblower Protection Authority that can appropriately direct whistleblowers (current, former and prospective) to relevant information, advice and support. This could involve referrals to, and possibly some funding for, legal, career, health and other personal support services.

89. This body could also have a role in preventing adverse outcomes for public interest whistleblowers and their organisations by:

- ensuring that whistleblowers (and organisations) can be appropriately directed through the various systems;
- issuing guidance and information and undertaking education, training and public awareness; and
- monitoring whistleblower protection frameworks at a Commonwealth level—for example, undertaking data collection, general oversight and, potentially, reviews or inquiries into systemic issues.

**Recommendation:**

- **The Australian Government should consider establishing and adequately resourcing a Whistleblower Protection Authority as an independent statutory body that operates in relation to whistleblower matters arising under any Commonwealth regime.**

# Supporting access to legal information

## Australasian Legal Information Institute (AustLII)

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

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

[73] See, e.g., Law Council of Australia, *National Anti-Corruption Commission Bills 2022* (Submission, 14 October 2022) 21-22; *Public sector whistleblowing reforms: Stage 2* (Submission, 22 December 2023) 24-26; *2024-25 Pre-Budget Submission* (Submission, 25 January 2024) 25-26.

**Recommendation:**

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

# Agency resourcing

## Australian Human Rights Commission

92. We acknowledge that additional funding was provided to the AHRC in the 2022–23 Budget to somewhat address its long-term underfunding in light of its varied and increasing program of work.[74] However, no additional funding measures were provided in the 2024-Budget.

93. Further, members of the legal profession have reported that, in AHRC workplace harassment and discrimination matters, there are delays of six to 12 months after filing before the employer is notified of the complaint, and further months of delay before the conciliation hearing. We also understand that the AHRC is unable to provide benchmarks for responding to and resolving complaints due to resourcing constraints.[75]

94. The recent *Respect@Work* reforms implemented under the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (Cth) impose a positive duty on employers to prevent workplace sexual discrimination and harassment. The increased workload arising from these reforms is likely to exacerbate the existing delays in the workplace discrimination and harassment jurisdiction. Accordingly, careful scrutiny is needed as to whether the AHRC's base funding is sufficient to ensure that it can carry out its core functions effectively.

**Recommendation:**

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

## National Commission for Aboriginal and Torres Strait Islander Children and Young People

95. On 4 October 2024, Senator McCarthy and the Minister for Social Services, the Hon Amanda Rishworth MP, announced the establishment of the **National Commission** for Aboriginal and Torres Strait Islander Children and Young People.[76] The National Commission has been established as an Executive Agency under the *Public Service*

[74] Hon Mark Dreyfus KC MP, Attorney General, 'Investing in Integrity, Human Rights and Safety' (Media Release, 25 October 2022).
[75] See AHRC, *Annual Report 2023-24*, 1-2 and 6.
[76] Senator the Hon Malarndirri McCarthy and the Hon Amanda Rishworth MP, *Establishment of the National Commission for Aboriginal and Torres Strait Islander Children and Young People* (Media Release, 4 October 2024).

*Act 1999* (Cth) and has been operational from 13 January 2025,[77] with Lil Gordon as the Acting National Commissioner.[78]

96. The establishment of the National Commission is welcome,[79] and we note that this body is intended to be 'dedicated to protecting and promoting the rights, interests and wellbeing of Aboriginal and Torres Strait Islander children and young people across a range of issues, including the over-representation of Indigenous children in out-of-home care'.[80]

97. It is critical that the National Commission be empowered and adequately funded to fulfil its mission by working effectively with Aboriginal and Torres Strait Islander people, communities, guardians, advocates, and other stakeholders to develop and deliver policies, programs and services for Aboriginal and Torres Strait Islander children and young people.

98. The National Commission should also be empowered to implement preventative measures to decrease the overrepresentation of Aboriginal and Torres Strait Islander young people in the criminal justice system, in line with Closing the Gap Target 11.[81]

**Recommendation:**

- **The Australian Government should allocate adequate funding to the National Commission for Aboriginal and Torres Strait Islander Children and Young People to ensure that this body can work effectively to fulfil its mission and implement preventative measures to decrease the overrepresentation of Aboriginal and Torres Strait Islander young people in the criminal justice system.**

## Fair Work Commission

99. The *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (Cth) expanded several of the FWC's functions relating to workplace bargaining, enterprise agreements, workplace sexual harassment, disputes about flexible work arrangements and extensions of unpaid parental leave.

100. The legislation also conferred obligations on the FWC to establish expert panels relating to the care and community sector and gender pay equity, and to absorb the functions of the Registered Organisations Commission.

[77] Ibid.
[78] Australian Government (National Commission for Aboriginal and Torres Strait Islander Children and Young People), *Meet the National Commissioner* (Web Page, 2025).
[79] Law Council of Australia, *Australia's youth justice and incarceration system* (Submission, 22 October 2024) 26.
[80] Senator the Hon Malarndirri McCarthy and the Hon Amanda Rishworth MP, *Establishment of the National Commission for Aboriginal and Torres Strait Islander Children and Young People* (Media Release, 4 October 2024).
[81] Australian Government, *National Agreement on Closing the Gap* (Online, July 2020) 33-34; See Law Council of Australia, *Australia's youth justice and incarceration system* (Submission, 22 October 2024) 26-27.

101. More recently, the 'Closing Loopholes'[82] legislation has expanded the functions of the FWC significantly, including through the new regulated labour hire arrangement jurisdiction and other new jurisdictions including in relation to the right to disconnect, minimum standards for regulated workers and disputes relating to unfair deactivation, unfair termination and unfair contracts.[83]

102. The Treasury should work closely with the FWC to ensure it has adequate resourcing to give effect to these additional responsibilities.

103. In addition, resourcing is required to further modernise the FWC's remote conferencing facilities. We note that, even after a recent facilities upgrade, staff-led conciliations are limited to audio conferencing. In most cases, the use of video conferencing is extremely valuable in facilitating early dispute resolution. Video conferencing should be the default medium for all remote conferencing, while allowing the parties to agree to revert to audio in appropriate matters, such as where trauma is involved.

**Recommendation:**

- **The Australian Government should allocate appropriate funding to ensure the FWC is sufficiently resourced to implement the workplace reform agenda, and to support dispute resolution through remote video conferencing.**

## Office of the Australian Information Commissioner

104. Strong privacy laws and protections are critical to building public trust and confidence in the digital economy. The Government began the review into the *Privacy Act 1988* (Cth) in 2020. The Attorney-General Department's Privacy Act Review Report contained 116 proposals that aim to make the Privacy Act fit-for-purpose to protect privacy in the digital age.[84]

105. In the Government Response to the Privacy Act Review Report, the Government agreed with 38 proposals, agreed-in-principle with a further 68, and noted the remaining 10.[85] The recently assented to *Privacy and Other Legislation Amendment Act 2024* (Cth) will implement the first tranche of reforms to the Privacy Act, including 23 of the proposals agreed to by the Government, including new powers for the OAIC to develop a Children's Online Privacy Code.[86]

106. In addition, in his Second Reading Speech on the originating Bill on 12 September 2024, the Attorney-General stated that consultation on a second tranche of reforms will occur "over the coming months".[87] In the context of this ambitious reform agenda,

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[82] Including the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023* (Cth) and the *Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024* (Cth).
[83] For further information, see: Fair Work Commission, Annual Report 2023-24 - Access to Justice (30 September 2024) 9.
[84] Australian Government (Attorney General's Department), *Privacy Act Review Report* (Online, 16 February 2023).
[85] Australian Government (Attorney General's Department), *Government Response: Privacy Act Review Report* (Online, 9 May 2023).
[86] See Law Council of Australia, *Privacy and Other Legislation Amendment Bill 2024* (Submission, 22 October 2024).
[87] Commonwealth, Parliamentary Debates, House of Representatives, 12 September 2024, 25 (Mark Dreyfus, Attorney-General).

the Government should provide additional ongoing funding for the OAIC to ensure that it is equipped to meet its increasing responsibilities.

107. We acknowledge that the OAIC received an additional $5.6 million in funding in the 2024–25 financial year to support the Australian Government's Digital ID Initiative.[88] While this additional resourcing is welcome, the context of the ambitious privacy reform agenda requires that the Government provide additional ongoing funding for the OAIC to ensure that it is equipped to meet its increasing responsibilities.

**Recommendation:**

- **The Australian Government should provide additional funding for the OAIC to support the timely implementation of reforms to Australia's privacy regime.**

# Support for independent legal professional bodies in the South Pacific

108. Civil society organisations, including professional lawyers' associations, are crucial to negotiating and shaping institutions in developing jurisdictions. These bodies contribute to the ongoing processes of stable politics by representing interests, participating in consultative policy processes, and promoting the flow of information between government and the public.[89]

109. In particular, independent and self-governing legal professional associations play an important role to safeguard the rule of law and the protection of human rights. Also, these associations:

- promote and defend the proper separation of powers, in particular, a strong and independent judiciary;
- monitor legislation and the exercise of executive power;
- promote the development of effective, accountable and transparent institutions; and
- cooperate with governments to promote effective and equal access to justice.

110. Australia's International Development Policy acknowledges that effective states and their citizens benefit from transparent, accessible and responsive governance, and undertakes to respect and promote civic space.[90]

111. In 2006, the Law Council initiated the establishment of the South Pacific Lawyers' Association (**SPLA**), a regional organisation comprised of legal professional associations and lawyers' groups representing seventeen jurisdictions across the South Pacific.[91] SPLA works to support, develop, and strengthen law societies and bar associations in South Pacific jurisdictions, and provide South Pacific lawyers with

[88] Office of the Australian Information Commissioner, *Statement on the Federal Budget 2024-25* (Media Release, 15 May 2024).
[89] Adrian Leftwich, *Think piece: The political approach to law and justice sector* (Online, August 2011) 13-14. See also, Office of Development Effectiveness, *Building on Local Strengths: Evaluation of Australian Law and Justice Assistance* (Online, December 2012).
[90] Australian Government (Department of Foreign Affairs and Trade), *Australia's International Development Policy* (Online, August 2023) 38.
[91] American Samoa, Australia, Cook Islands, Fiji, Kiribati, Marshall Islands, Nauru, New Zealand, Niue, Norfolk Island, Papua New Guinea, Samoa, Solomon Islands, Timor Leste, Tonga, Tuvalu and Vanuatu.

continuing professional development (**CPD**) opportunities. The Law Council continues to serve as the SPLA Secretariat.

112. We have previously encouraged the Australian Government, through its International Development Policy, to expand partnerships with independent legal professional associations in the South Pacific region, and support their activities.[92] We would be pleased to assist the Government's Overseas Development Assistance Program as it relates to law and justice in the Pacific.

113. We have previously highlighted that CPD—that supports legal practitioners to continue to maintain and improve their skills and knowledge of law and to meet their professional and ethical obligations—is especially critical in Pacific jurisdictions.[93] This is due to the higher proportion of junior lawyers and sole practitioners who often operate in poorly-resourced and volatile legal and regulatory environments.[94] Despite this, Pacific lawyers face various barriers to accessing quality CPD training and materials, including the lack of local providers and trainers, the cost of attendance (including travel costs), poor communications infrastructure, the unavailability of online CLE resources, and the workloads of practitioners.[95]

114. In this context, we continue to encourage the Australian Government to allocate funding to support initiatives that provide access to CPD opportunities for Pacific Island lawyers in response to identified priorities.

**Recommendations:**

- **The Australian Government should provide funding and other assistance to develop, support, and strengthen legal professional associations in the South Pacific.**
- **The Australian Government should provide funding to support professional development and training for legal practitioners in the South Pacific.**

[92] Law Council of Australia, *Submission in relation to Australia's New International Development Policy* (Submission, 30 November 2022) 2.
[93] Law Council of Australia, *Australia's response to the priorities of Pacific Island countries and the Pacific region* (Submission, 5 July 2024) 9.
[94] Ibid.
[95] Ibid.