Justice Impact Assessment Framework

Law Council
OF AUSTRALIA

The introduction of new legislation, shifts in policy, and changes to programs (**Measures**) can affect the rights, interests, duties and legitimate expectations of individuals, communities and businesses resulting in additional legal need. These impacts can create additional demands on the justice system (including courts and tribunals) and significant pressures for participants in the justice system (including publicly funded legal assistance services and their clients). Failing to consider these consequences impedes the effective administration of justice and causes people stress and delay.

Such Measures arise across multiple portfolios and require early planning, coordination across government and genuine consultation. This Framework contains questions to assist decision makers across Australia's various parliaments and governments to consider the downstream impacts of proposed legislative or regulatory change on the justice system. It is intended to guide evidence-based, principled and systematic decision-making and facilitate parliamentary scrutiny. It should be used in conjunction with the Law Council's Best Practice Legislative Development Checklist (**Checklist**), and the Australian Government Impact Analysis Framework.

Overarching principles

1. Best practice in scrutinising proposed Measures should be evidence-based, conscious of a range of options and consequences, and informed by consultation with stakeholders.
2. Best practice requires a systematic, whole-of-government, early consideration of the likely justice impact of a Measure, including:
    a. impacts on legal need amongst affected individuals, families, businesses and communities;
    b. the additional demand it creates for legal services, particularly publicly funded legal assistance services; and
    c. the impact on the resources of courts, tribunals and agencies involved in the administration of justice, including dispute resolution services.
3. Measures likely to impact the justice system should be accompanied by a proportionate allocation of resources to publicly funded services likely to experience an increase in demand as a result of those changes.

Guiding questions

When seeking to introduce or scrutinise a proposed Measure, decision makers in Parliament and Government should consider the following questions.

Matters creating legal need

1. Does the Measure extend, qualify or remove a right, benefit or expectation of an individual, organisation or group? If so, how?
2. Does the Measure create or rely on sanctions, new offences or civil penalties for its enforcement (including discretionary powers provided to public officials to impose penalties)?
3. Does the Measure include or impact upon an administrative review process or judicial process of appeal or review?

4. Will the Measure involve complicated changes/processes for affected individuals and businesses?

5. Will the justice impacts of the Measure differ for regional, rural and remote communities?

6. Has an assessment been undertaken to identify which groups—including vulnerable persons—will be disproportionately / adversely impacted (whether by intention or in practice)? What were its findings and how have any issues identified been addressed?

7. For example, with reference to the justice and other relevant targets set out under the National Agreement on Closing the Gap, has a process been undertaken to identify and address any particular impacts for First Nations Australians?

Legal assistance

8. Have the steps of a complete legal dispute been mapped and costed? If so, what were the findings of that analysis?

9. Once implemented, is the Measure likely to require individuals and businesses to seek legal advice and representation, including on different sides of a dispute?

10. Do the interests of justice require legal representation in proceedings arising under this Measure?

11. Would the Measure increase or decrease demand for publicly funded legal assistance services across all relevant stages (e.g. legal information, referral, advice and representation)?

12. What additional funding for publicly funded legal assistance services has been provided for the Measure?

Impact on the administration of justice

13. In the event of a dispute, what courts/tribunals will likely be engaged in the resolution of that dispute?

14. What is the likely additional burden on courts/tribunals in processing disputes linked to the Measure? Has a structured assessment been undertaken into the likely impacts of the Measure on caseload volume, decision making complexity, case management requirements and procedural obligations, hearing length and cost of administration?

15. What is the likely effect on administration of self-represented persons managing their own cases in responding to matters linked to the Measure?

16. What additional funding has been provided to allow courts/tribunals and other affected justice agencies to meet any additional demand on their services?

Consultation

17. Who was consulted in the process of developing the Measure? For new legislation, did that consultation comply with the steps outlined in the Checklist? Did careful whole-of-government planning occur with justice departments?

18. Did the consultation process include civil society organisations representing affected groups, and did decision-makers genuinely consider the outcomes of those consultations? Did the consultation extend to the creation of legal need caused by the Measure?

19. What is the evidence base underpinning the Measure? How has the evidence base been sourced and evaluated (e.g. through pilot programs and testing, consultation, relevant comparators)?

20. Has economic modelling been undertaken to consider the financial impact and related impact on legal need? If so, what were the findings of that analysis?