Law Council
OF AUSTRALIA

12 November 2025

The Hon Debra Mortimer
Chief Justice
Federal Court of Australia
Owen Dixon Commonwealth Law Courts
Building 305 William Street
MELBOURNE VIC 3000

By email: LIPfeedback@fedcourt.gov.au

Dear Chief Justice

Litigants in Person Practice Note

1. The Law Council is grateful for the invitation to provide input to the Federal Court of Australia on the development of the proposed *Litigants in Person Practice Note* (**Practice Note**).

2. The Law Council strongly supports initiatives that facilitate access to justice and the integrity of the justice system, and welcomes the development of this Practice Note as a valuable tool in meeting those ends.

3. In preparing this submission, we have received contributions from the ACT Law Society, Law Institute of Victoria, Law Society of New South Wales, Law Society of South Australia, and the Law Council's Business Law Section and Federal Dispute Resolution Section.

General comments

4. A number of factors can lead to parties appearing as litigants in person (**LIP**s), either voluntarily or involuntarily. The costs—including financial and opportunity (e.g. time away from work and impact on family members)—involved in accessing the justice system are often prohibitive for parties who cannot afford private legal representation, do not qualify for a grant of Legal Aid, and cannot access other forms of assistance (including pro bono representation).[1]

[1] While we appreciate that legal assistance funding does not fall within the Court's purview, it is important to recognise that many of the challenges arising in these matters could be overcome by increased support for legal assistance. As pointed out by Dr Warren Mundy as part of the Independent Review of the National Legal Assistance Partnership, it is well established that 'legal assistance generates a range of avoided costs to the justice system' and 'improves operational capacity and efficiency of civil and criminal courts': Warren Mundy, Independent Review of the National Legal Assistance Partnership (Final Report, March 2024), 14.

5. Litigants may also seek to represent themselves due to a limited understanding of the legal system, the death or incapacity of a lawyer initially retained or the inability to give the necessary instructions to a lawyer.[2]

6. The Law Council understands that a growing number of LIPs are seeking to appear across Australia's courts and tribunals.[3] In its Annual Report for the 2024–25 financial year, the Court noted that almost 500 matters were commenced by LIPs and allocated to judges in the Court.[4] Applications by LIPs were particularly common in the Practice Areas of Administrative and Constitutional Law and Human Rights (excluding Migration), Migration, and Commercial and Corporations.[5] The Court is therefore dealing with a substantial cohort of litigants who are likely to be unfamiliar with the Australian law, the legal system and the processes and procedures of the Court, often involving legal complexity.

7. Significant challenges are faced by LIPs and by the Court in seeking to ensure that proceedings are conducted fairly and efficiently. The Law Council strongly supports the development of the Practice Note and welcomes the Court's commitment to addressing those challenges through the Litigants in Person and Pro Bono Project.[6]

8. During the course of receiving submissions, we have received information about comparative materials in other jurisdictions that we would be pleased to provide should it be required.

9. The Law Council would be pleased to work further with the Court on the development of the Practice Note and would welcome the opportunity to circulate and comment on a draft version of the Practice Note once it is developed.

Diversion and referrals

Prioritising diversion towards legal representation

10. The Law Council recommends that the Practice Notice have a clear focus on diverting LIPs towards potential options for obtaining legal advice and representation prior to commencing proceedings.

11. It is likely that many LIPs could be diverted from representing themselves if they were made aware of potential options for legal assistance at low or no cost, and the costs and risks associated with proceeding unrepresented. Accordingly, it would be beneficial to highlight that risk in the introductory paragraphs and explain how to seek further help, before taking it as assumed that the reader wishes to represent themselves.

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2 Justice Richard White, 'Advocacy and Ethics: The Self-Represented Litigant' (Speech, 18 October 2024) 2-3.

3 See, eg, Legal Practitioners Liability Committee (Vic), Annual Report 2022-23, 15; Victorian Civil and Administrative Tribunal, Annual Report 2022-23, 16; Supreme Court of Victoria, Annual Report 2022–23, 8; NSW Civil and Administrative Tribunal, Annual Report 2022-2023, 17; Productivity Commission, *Access to Justice Arrangements* (Report, December 2014) vol 1, ch 14; Justice Richard White, 'Advocacy and Ethics: The Self-Represented Litigant' (Speech, 18 October 2024).

4 Federal Court of Australia, Annual Report 2024-25 (19 September 2025) 124-127.

5 Ibid 125.

6 Federal Court of Australia, Litigants in Person and Pro Bono Project (Web Page, 2025).

Non-legal advice and referral

12. We support the inclusion of information on available non-legal assistance, including interpreter services, mental health and disability support and the Court's financial counselling project in bankruptcy proceedings. There is strong evidence of links between LIPs and psycho-social need, which can result in complex and sometimes problematic dealings with courts and tribunals.[7] We consider that it may be valuable to draft this part of the Practice Note in consultation with key stakeholders, including non-legal stakeholders.

13. Additionally, the Practice Note should direct litigants to relevant Court resources, such as the *Guide to Communications with Chambers Staff* and other practice guidance. Those resources can help bridge the gap between procedural requirements and practical understanding and reduce the risk of communication breakdown and acrimonious interaction.

Responsibilities and conduct

Responsibilities of litigants

14. The Law Council strongly supports the responsibilities and conduct expectations of self-represented parties being made explicit as a part of the Practice Note. That would include not only the boundaries on acceptable and unacceptable conduct but also practices that reduce unnecessary costs to the Court, respondents and legal practitioners. For example, the Practice Note should reinforce the expectation that parties confer before contacting the Court and confirm whether correspondence is sent by consent or with the knowledge of other parties. That practice promotes procedural efficiency and reduces unnecessary back-and-forth with the Court. Whilst it is consistent with other Practice Notes, reiterating the requirement in this Practice Note would be beneficial for LIPs.

15. The Practice Note should clearly outline the requirements to commence or defend proceedings only where there is an arguable legal basis, comply with Court orders and directions, and refrain from abusing Court processes. The Practice Note should also address conduct that may breach Work Health and Safety duties or constitute criminal behaviour—such as threats or abuse directed at judicial officers, staff, or other parties. Whilst some latitude should be extended to LIPs unfamiliar with the law and legal processes, the Practice Note should make clear that abusive behaviour will not be tolerated and may have serious consequences, and that parties engaging with the Court are under an obligation to follow the instructions and orders of the Court.

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[7] See, eg, Kate Davies et al, *'I would have given up without it': An evaluation of the NDIS Appeals Program Legal Services* (Law and Justice Foundation of NSW, 2025); Catherine Hastings, *Sector Perspectives: Legal Need in Australia* (Macquarie University, 2024); Nigel Balmer et al, *The Public Understanding of Law Survey (PULS), Volume 3: A New Perspective on Legal Need and Legal Capability* (Victoria Law Foundation, 2024); Delphine Bellerose et al, *Data to inform assessment of legal needs in New South Wales* (Law and Justice Foundation of NSW, 2023).

Conduct guidance for LIPs

16. LIPs do not owe enforceable ethical duties in the same manner as members of the legal profession (unless they are admitted practitioners appearing in a personal capacity) but are subject to the general law and disciplinary authority of the Court arising in legislation, common law or the inherent jurisdiction of courts to control proceedings.

17. The Court will need to clearly set out the standards it expects LIPs to observe in preparing and presenting their case, and its expectations about their personal behaviour towards the other participants in court proceedings. The standards of professional conduct expected of legal practitioners would be one useful starting point for this analysis. For example, the Practice Note could inform parties that they must be honest and courteous in all dealings with the Court and other parties, not mislead the Court, comply with the *Guide to Communications with Chambers Staff*, and prepare and present their cases to the best of their ability to assist the Court. The Practice Note should also contain a clear statement on the objectivity of the role of the judicial officer. For example, it may be explained that mere agreement of a judge with submissions made by one party or another does not of itself constitute bias.

Risks and consequences

18. Aligned with the diversionary objective discussed above, it is important that the Practice Note clearly sets out the risks if a litigant does not meet their responsibilities, including financial repercussions (such as an adverse costs order), impacts on the outcome of their matter (including dismissal) and, in certain circumstances, vexatious litigant declarations or findings of contempt of court.

19. As costs orders are often misunderstood by LIPs, it would be helpful for the Practice Note to contain information on that issue (including broader scenarios beyond indemnity costs, where costs may be awarded or incurred) and for the Registrar or Judge to reinforce that information before the parties proceed to a substantive hearing.

Case management and procedures

Case management processes

20. We suggest that the Practice Note clearly explains the difference between procedural and substantive listings. Many LIPs do not realise the purpose of the case management hearing and incorrectly assume that they will be presenting the substance of their matter.

21. It may also be helpful for the Practice Note to convey that the case management process may run more smoothly if both parties can agree on orders in advance of the hearing, which then can be handed to the Registrar or Judge for their consideration. Depending on the individual case, the Practice Note may explain that consideration may be given to whether more extensive, 'front-end' case management of matters involving LIPs, such as a conference between the parties and Registrar upon filing to narrow the issues in dispute.

22. As many LIPs will be unfamiliar with the process within the courtroom itself, it would be worthwhile for the Practice Note to explain court procedures; for example, the need to wait for a matter to be called. It may be useful to develop audio-visual resources with that type of practical information, as discussed below.

Guidance on filing an application

23. The consultation page notes that the Practice Note will explain various aspects of the Court process, including 'starting or defending a case if there is an arguable legal claim'.[8] It also proposes that the Practice Note will include information on 'filing an originating application that clearly sets out the legal basis for the claim and the relief sought, preparing an additional document explaining what happened and connecting those facts to the relevant law'.[9]

24. An inevitable difficulty arising in the case of LIPs is that, without the benefit of legal training or advice, the person may be unclear as to whether they have an 'arguable legal claim or defence' and likely struggle to prepare their case and evidence. Many people confuse the difference between an emotional sense of grievance, an actionable cause, and simply not liking what the law requires.

25. There are specific challenges associated with administrative reviews, such as those in the migration jurisdiction, where a person may struggle to make a distinction between a review on the merits of a case, which will not be reviewed by the Court, and a review to determine whether a decision is infected by legal error.

26. The Practice Note should contain simple examples of common issues in applications, including the difference between filing and service, what constitutes legal error (such as identifying the wrong law or ignoring relevant material), and the lawful grounds for appeal.

27. As noted above, a more intensive case management approach may assist in narrowing and articulating the relevant issues and particularise the claim by exploring such issues. The Registrar or Judge, as part of the first case management hearing, could emphasise the Practice Note material with the LIP. That approach could assist in focusing the LIP's attention on relevant issues so that, as far as is practicable, they may appropriately particularise their claim.

28. Whilst we support the notion of guidance on filing the application and clarifying the legal basis for a claim, there is a point where the information itself is beyond simple articulation. For example, the concept of jurisdictional error and its relationship with section 75(v) of the *Constitution*.

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[8] Federal Court of Australia, Litigants in Person and Pro Bono Project (Web Page, 2025).
[9] Ibid.

Accessibility

Structure

29. To the extent it is possible, we recommend that the Practice Note be structured in a manner that follows the most common progress of a proceeding from its initiation to its conclusion. That structure could also be assisted by facilitated though flowcharts and step-by-step visual information.

Accessible language

30. Many parties without legal training do not understand court process, etiquette and terminology. The Law Council supports and welcomes the intention of materials being available in clear and non-technical language.

31. It may also be prudent to have the Practice Note translated into a range of languages, especially given the prevalence of migration, administrative and human rights matters coming before the Court.[10]

32. Striking the right balance on the size of the document will also be important. A large, text-heavy document available for download is unlikely to be effective.

Supporting resources

33. We consider that supporting materials, such as short videos or other visual information, will be critical in assisting many LIPs to understand and make use of the Practice Note and participate more effectively in proceedings. One example might be a video which explains case management and the formalities of the Court. We note that the Federal Circuit and Family Court of Australia (Division 2) has developed several short videos in multiple languages to explain its common processes.[11]

34. We recommend that the web resources of the Court intended to support LIPs be centralised for ease of access. For example, links to resources such as the Commonwealth Courts Portal are not easily located and could be embedded alongside the Practice Note within the explanatory section on LIPs on the Federal Court's 'Starting a matter' page.[12]

Artificial intelligence

35. Members of the legal profession have reported a marked increase in the use and reliance on generative artificial intelligence (**AI**) in the preparation of cases, drafting and formulation of legal arguments used by LIPs. This is highly problematic because AI advice is routinely unreliable, misleading and/or misused.[13] The situation is further complicated by the fact that many LIPs lack the legal capability to understand or confirm the accuracy of the material generated through the use of AI.

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[10] Federal Court of Australia, Annual Report 2023/24, 75-76. We note that there were 430 matters commenced by SRLs in the Federal Court in that year. Of these 142 were appeals in migration cases.
[11] Federal Circuit and Family Court (Division 2), Helpful videos (Web Page).
[12] See Federal Court of Australia, Starting a matter in the Federal Court (Web Page).
[13] See, eg, *Deysel v Electra Lift Co* [2025] FWC 2289.

36. LIPs are a high risk for the introduction of AI-based material into proceedings, which brings an equally high risk of unnecessary costs in proceedings. We strongly recommend that the Practice Note contains clear instructions on the limits and requirements on the use of AI, with a clear statement on the consequences of misleading the Court and diversion to seek legal advice.

37. In particular, clear guidance will be required on the use of AI by LIPs, including:

    (a) clear limits on what AI can and cannot be used for;

    (b) verification and disclosure requirements;

    (c) clear obligations on the overarching obligation not to deceive or mislead the Court;

    (d) emphasis on ensuring the integrity of evidence; and

    (e) cost implications for misleading the court and legal practitioners.

38. We note that the Court is currently in the process of developing a Practice Note on the use of AI.[14] The two Practice Notes should be developed in a coordinated manner to ensure alignment and consistency in the support and direction provided to LIPs.

Contact

39. Thank you for the invitation to make this submission. The Law Council would be pleased to continue ongoing dialogue with the Court on this matter. For further comment or clarification, please contact John Farrell, Executive Policy Lawyer [redacted].

Yours sincerely

Elizabeth Shearer
Executive Member

[14] See also Law Council of Australia, Submission to the Federal Court of Australia, Artificial intelligence use in the Federal Court of Australia (16 June 2025).