

# MESSAGE FROM THE PRESIDENT

**It is my pleasure to welcome you to  
Canberra for the 29th POLA Conference.**

2018 has been a busy year for the Law Council and the Australian legal profession. The laws and what they mean for the citizens of this country can have profound and lasting effects. The Law Council takes on its role as educator, counsellor, mentor and defender of justice very seriously indeed.

The Law Council, through its advocacy and leadership, has become a very public and recognisable voice for the rule of law and justice. In Australia, we now find ourselves in unfamiliar territory – having to work to defend and protect rights previously taken for granted.

In the words of Chief Justice of New South Wales, Tom Bathurst AC:

*Many small encroachments, taken individually, arguably have little effect. Taken cumulatively over time ... they can be the death by a thousand cuts of significant aspects of our rights and freedoms.*

Australia has a strong and independent legal profession respected at home and internationally. The Law Council represents more than 65,000 lawyers across this country- A group of people bound by long-held professional values; by their duty to the court; to uphold the rule of law, and to always act with integrity.

We have a strong and independent judiciary. The rule of law has been tested and not found wanting.

Our longstanding reputation as a fair, open-hearted and prosperous country, with a strong legal system, has distracted us from an uncomfortable truth. There are growing numbers of people unable to access justice, who are excluded from that system and thus from equality before the law.

The Law Council is convinced that it needs to value a just society – not merely one which keeps law and order. The values of equality, of democracy and of



justice underpin who we are as a nation. If those values are compromised, so are we.

The Law Council itself is strong and independent. We not only understand the challenges and issues of the day, but actively seek and advocate for the solutions, with a particular focus in 2018 on:

- Being a trusted advisor to parliament on key legislative matters;
- Defending an independent judiciary;
- Working to safeguard the future of the legal profession;
- Aboriginal and Torres Strait Islander peoples justice issues; and
- Rural, regional and remote justice issues.

During the course of this Conference, I hope to be able to speak with each of you about these priorities and to learn more about your challenges and successes.

**Morry Bailes**  
President, Law Council of Australia

# 29<sup>TH</sup> POLA CONFERENCE PROGRAM

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All sessions on the program will take place at the Hyatt Hotel Canberra.

## 1 August 2018

TIME	DESCRIPTION	LOCATION
5.00pm - 7.00pm	Cocktail reception Dress Code - Business Attire	Centenary Ballroom

## 2 August 2018

TIME	DESCRIPTION	LOCATION
8.30am - 9.00am	Registration	Outside Centenary Room 2
9.00am - 11.00am	Presidents' Meeting, Part 1	Centenary Room 2
11.00 - 11.30am	Morning Tea/ Late Registration	Atrium South (Outside Canberra Room)
11.30am - 12.00pm	Official Opening of 2018 POLA Conference Welcome to Country - Aunty Jannette Phillips of the Ngunnawal people Address to POLA by Morry Bailes, President, Law Council of Australia	Canberra Room
12.00pm - 1.00pm	Conference Session 1 - Independence of the Judiciary and Legal Profession	Canberra Room
1.00pm - 2.00pm	Lunch	Atrium South (Outside Canberra Room)
2.00pm - 3.00pm	Conference Session 2 - Independence of the Judiciary and Legal Profession (continued)	Canberra Room
3.00pm - 3.30pm	Afternoon tea	Outside Canberra Room
3.30pm - 5.00pm	Conference Session 3 - Anticorruption and Transparency	Canberra Room

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5.00pm End of Day 1

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### 3 August 2018

TIME	DESCRIPTION	LOCATION
9:30am - 10:30am	Conference Session 4 - Business and Human Rights and the Legal Profession	Canberra Room
10:30am - 11.00am	Morning Tea	Atrium South (Outside Canberra Room)
11.00am - 12.00pm	Conference Session 5 - Inclusion and Diversity in the Legal Profession	Canberra Room
12.00pm - 1.15pm	Lunch	Atrium South (Outside Canberra Room)
1.30pm - 3:30pm	Tour of Parliament House	Departing from Hyatt Hotel Canberra banquet entrance (rear of hotel)
4.00pm - 5.00pm	Presidents' Meeting, Part 2 (Afternoon tea provided)	Centenary Room 2
5:00pm - 6:30pm	Free time	
6:30pm - 7:00pm	POLA Conference Group Photograph	Atrium South (Outside Canberra Room)
7.00pm - 9.30pm	Closing Ceremony and Conference Dinner	Canberra Room
End of Conference Program		

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# PRESIDENTS' MEETING – AGENDA

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## Part 1

*9.00am - 11.00am*

*2 August 2018*

- Report from POLA Members:  
(3 minutes from each POLA Member on priorities and current areas of focus)
- Review of POLA Objectives, Founding Documents and Operations  
(Sponsor: LCA)
- Proposal to agree a Communique on outcomes from the Conference
- Suspension

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## Part 2

*4.00pm - 5.00pm*

*3 August 2018*

- Discussion of Conference highlights and lessons for the 2019 Conference
  - Discussion of Conference Communique
  - (by agreement) Signing of Conference Communique
  - Decision on hosting arrangements for the 2019 and 2020 Conferences
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## OPENING SESSION

### The Law Council's role as the voice of the Australian legal profession

11.30am - 12.00pm

2 August 2018

Morry Bailes, President, Law Council of Australia

President Bailes will discuss how the Law Council fulfils its role as the leading voice of the Australian legal profession, including through the Justice Project

and a national event on the Future of the Legal Profession. President Bailes will also discuss some of the challenges for Australia's legal profession, including those imposed by Australia's unique geography.

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## WORKING SESSION 1 & 2

### Independence of the judiciary and legal profession

12.00pm - 1.00pm

2.00pm - 3.00pm

2 August 2018

The independence of the judiciary and the legal profession are fundamental to the rule of law. However, these important principles are under challenge throughout the region. Attempts to curb the independence of professional associations of lawyers; criticism of judicial and quasijudicial figures, and inadequate funding of courts and legal assistance are just some of the challenges faced by POLA members.

How should the legal profession respond? What works and what doesn't? How can POLA support the independence of the judiciary and legal profession throughout the region?

- George Varughese (President, Malaysian Bar) - An Update on the Rule of Law in Malaysia
  - Jose-Antonio Maurellet SC (Vice Chairman, Hong Kong Bar Association) - One Country, Two Systems and the Role of the Legal Profession
  - Lalit Bhasin (President, Bar Association of India)- Outcomes from the Rule of Law Convention 2018 on Judicial Reforms
  - Khunan Jargalsaikhan (President, Mongolian Bar Association) - Independence of the Mongolian Legal Profession
  - Chris Leong (President, LAWASIA) - A Regional Perspective on the Independence of the Legal Profession and the Judiciary
  - Laurel Vaurasi (President, Law Society of Fiji) - Judicial Independence and the Legal Profession in Fiji
  - Mohammad Anamul Hoque (National Bar Association of Bangladesh) - Establishment of Rule of Law and the Independence of Judiciary in Bangladesh
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# CONFERENCE SESSIONS

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## WORKING SESSION 3

### Anti-corruption and Transparency

3.30pm - 5.00pm

2 August 2018

Governments throughout the region have considered a wide range of responses to enhance transparency, accountability and rule of law outcomes.

The Panel for this session will be invited to report on an important anti-corruption and transparency issue in their jurisdiction and the impact of this issue on the rule of law.

This could be a recently implemented measure, a measure under consideration, or a worthwhile measure that is not currently on the policy agenda.

- Zhengfu Zhu (Vice President, All China Lawyers Association) - Anti-corruption and Transparency Initiatives in China
- Dr Hyun Kim (President, Korean Bar Association)- The Impact of the Kim Young-ran Act
- Sharav Oyumaa (Member/Advocate, Association of Mongolian Advocates )- The Performance of Mongolia's Independent Authority Against Corruption

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## WORKING SESSION 4

### Business and Human Rights and the Legal Profession

9.30am - 10.30pm

3 August 2018

The concept of 'business and human rights' is articulated in the United Nations Guiding Principles on Business and Human Rights (the Guiding Principles) and is emerging as an issue of strong interest for the international community.

There is a critical need for the legal profession to take a leadership role in raising awareness of and encouraging compliance with the Guiding Principles. This session will allow POLA members to share how they are working to promote business growth and innovation as well as delivering human rights outcomes.

- Melissa Pang (President, Law Society of Hong Kong) - Regulating Ethical Business Conduct: the Case of Transparency of Beneficial Ownership
- Horacio Bernardes-Neto (Vice President, International Bar Association) - The IBA's Business and Human Rights Project
- Yutaro Kikuchi (President, Japanese Federation of Bar Associations) - Business and Human Rights and the Japanese Legal Profession
- Mr Dahanayake Kumara (Treasurer, Bar Association of Sri Lanka) - Business and Human Rights in Sri Lanka and Sub-Continental Region

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## WORKING SESSION 5

### Inclusion and Diversity in the Legal Profession

11.00am - 12.00pm

3 August 2018

The legal profession is committed to equality as a fundamental attribute of the rule of law. However, there is growing recognition that legal workplaces do not always provide equality of opportunity for all members of profession.

As leaders of the profession, law societies and bar associations have a responsibility to help the profession grasp the opportunities presented by changing times, expectations, and workplace laws. How can law societies and bar associations make a positive impact on the culture of the legal profession? What programs have POLA members implemented to bring about broader cultural change in favour of inclusion and diversity?

- Tiana Epati, (Vice-President, New Zealand Law Society) - Creating a Just Culture
- Gregory Vijayendran (President, Law Society of Singapore) - The Legal Profession's Youngest Stakeholders At Stake
- Morry Bailes (President, Law Council of Australia) - The Law Council's Inclusion and Diversity Initiatives
- Chi-Hsiang Eric Chang (Chairman of International Affairs Committee, Taiwan Bar Association) - Human Rights Protections, Same-Sex Marriage and Changes to the Taiwan Company Act

# LIST OF DELEGATES

## **POLA Member Organisations**

### **Law Council of Australia**

Morry Bailes, *President*

Jonathan Smithers, *CEO*

Margery Nicoll, *Deputy CEO/Director, International Law Section*

Christopher Dyer, *Senior Policy Lawyer, International Law Section*

### **National Bar Association of Bangladesh**

Rafiqul Islam, *Secretary*

Mohammad Anamul Hoque, *Member/Coordinator*

### **Bar Association of Kingdom of Cambodia**

Visal Suon, *President*

Neam Koy, *Deputy Secretary General*

Chanlida Lim, *Member*

Kagna Sao, *Member*

### **All China Lawyers Association**

Zhengfu Zhu, *Vice President*

Lu Xia, *Vice Secretary-General*

Fengzhuang Liang, *Staff, International Department*

### **The Law Society of Fiji**

Laurel Vaurasi, *President*

Wati Seeto, *Vice President*

Poonam Maharaj-Wong, *Council Member/ Assistant Treasurer*

### **Hong Kong Bar Association**

José-Antonio Maurellet, *SC, Vice Chairman*

### **Law Society of Hong Kong**

Melissa Pang, *President*

Heidi Chu, *Secretary General*

### **Bar Association of India**

Dr. Lalit Bhasin, *President*

Yakesh Anand, *Honorary Secretary General*

### **Japan Federation of Bar Associations**

Yutaro Kikuchi, *President*

Kosuke Oie, *Officer/Attorney, Office of International Affairs*

Kenichiro Tsuda, *Officer/Attorney, Office of International Affairs*

### **Korean Bar Association**

Dr. Hyun Kim, *President*

Hyun Sik Shin, *Vice President, International Affairs Division*

Eunhye Kang, *Deputy Secretary General*

### **The Malaysian Bar**

George Varughese, *President*

Abdul Fareed Abdul Gafoor, *Vice President*

Rajen Devaraj, *CEO*

### **Association of Mongolian Advocates**

Sharav Oyumaa, *Member/Advocate*

Batchuluun Tuul, *Member/Advocate*

Jigjidsuren Uranchimeg, *Member/Advocate*

Tsend-Ayush Enkhtuya, *Member/Advocate*

### **Mongolian Bar Association**

Jargalsaikhan Khunan, *President*

### **New Zealand Law Society**

Tiana Epati, *Vice President*

Bronwyn Jones, *Principal Advisor, Executive Director's Department*

### **The Law Society of Singapore**

Gregory Vijayendran, *President*

M Rajaram, *Vice President*

Delphine Loo Tan, *CEO*

Shawn Toh, *Director*

Lee Wei Yan, *Project Manager*

Lim Seng Siew, *Council Member*

### **Bar Association of Sri Lanka**

Sunil Dhajaya Bandara Abeyaratne, *Attorney-at-Law/  
Representative of President*

Dahanayake Liyana Arachchige Sujeewa Lal Kumara,  
*Attorney-at-Law/Treasurer*

Carunamuni Ruchira Sugathy Gunasekera, *Attorney-  
at-Law/Chairperson, Committee on Career  
Development of Women*

### **Taiwan Bar Association**

Ken-Yen Chi, *President*

Shih-Fang Lin, *Secretary General*

Chi-Hsiang Chang, *Chairman, International Affairs  
Committee*

### **Observers**

#### **International Bar Association**

Horacio Bernardes-Neto, *Vice President*

Kimitoshi Yabuki, *Senior Officer, Bar Issues  
Commission*

#### **LAWASIA**

Christopher Leong Sau Foo, *President*

Chungh Wan Choi, *President Elect after Chris Leong*

Michael Tidball, *Secretary General*

#### **Inter-Pacific Bar Association**

Jim FitzSimons, *Past President*

Neil Russ, *Regional Coordinator for Australasia and  
Southwestern Pacific Islands*

### **Member organisations not in attendance**

Bangladesh Bar Council

Burma Lawyer's Council

Bar Council of India

Indonesia Avocates Association (PERADI)

The Israel Bar Association

Lao Bar Association

Associacao dos Advogados de Macau

Nepal Bar Association

Pakistan Bar Council

Integrated Bar of the Philippines (IBP)

Law Society of Thailand

Vietnamese Lawyers Association

Ho Chi Minh City Bar Association

### **Observer members not in attendance**

The Union Internationale des Avocats (UIA)

# ABOUT POLA

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The Presidents of Law Associations in Asia (POLA), established in 1990, is a non-political organization providing a forum for the leaders of bar associations from across the Asia-Pacific region to exchange ideas and information, collaborate on issues of mutual interest and promote friendships.

Over the course of the past twenty years, POLA has advanced the creation and development of Asia-Pacific law societies, led the movement for professional independence of bar associations, strengthened relationships within the Asia-Pacific legal community, encouraged a greater commitment to public interest advocacy, called attention to human rights violations, raised awareness of the responsibilities of the legal profession and highlighted the importance of constant review of legal education systems throughout the region.

## The POLA Charter

### Article 1. (Name)

The name of this Organization shall be "the Conference of the Presidents of Bar Associations in Asia" (hereafter, the "CPBA").

### Article 2. (Nature)

The CPBA shall be a non-political conference for international exchange and cooperation amongst the presidents of bar organizations in Asia.

### Article 3. (Objects)

The object of the CPBA shall be

1. To exchange information and mutually cooperate regarding the operation and organization of the bar associations.
2. To provide regional cooperation for the promotion of peace and human rights activities.
3. To make joint efforts for the enhancement of the rule of law.
4. To cooperate in advancing the status of lawyers, in developing the legal profession and the scope of its activities and in strengthening the activities of the bar associations in the region and
5. To cooperate with related international or global organizations such as the UN.

### Article 4 (Membership)

6. Any president of bar organization representing a majority of the practicing lawyers in a country or area in Asia shall be eligible to be a member of the CPBA. The term "bar organization" shall include a bar association, a lawyers council, a law society, or any other organization of lawyers with a similar name.
7. Any president of any international legal association may participate in the Conference in session as an Associate member-observer with the approval of the Host Bar Association upon the recommendation by 3 or more Members. An Associate Member-observer shall not be eligible to vote on any matter or be entitled to participate in other activities of the CPBA.

### Article 5. (Conference)

The Conference shall, in principle, be held once a year in the country of a member.

8. Each conference shall determine the subsequent Host Bar Association and the place and time of the subsequent conference. The general agenda of the Conference shall be determined by the Executive Committee established for that year's conference.
9. At the Conference, each member shall have the right to one vote. A member shall be entitled to appoint one of the other members as his proxy if he is unable to attend a particular annual conference.

### Article 6. (Officers)

1. The CPBA shall have 3 officers: a Chairman, a Vice-Chairman and an Honorary Chairman. The Chairman shall be the President of the Bar Association sponsoring the subsequent conference, and a Vice-Chairman shall be designated by him.
2. The Honorary Chairman shall be the President of the Bar Association that sponsored the immediately prior conference.
3. The term of office of the Chairman and Vice-Chairman shall be until the closing of the conference in session from the time of appointment and its designation.

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#### **Article 7. (Executive Committee)**

1. The President of the Bar Association hosting the subsequent conference shall designate five or more persons in order to constitute an Executive Committee. The Executive Committee shall make its decisions by consensus: provided, however, that in the event of disagreement the decision of the Chairman shall be final.
2. The Executive Committee may include as its guest - non voting members a limited number of persons among those recommended by the President of the previous hosting Bar Association or other participating Bar Association. The Executive Committee shall be responsible for:
  - Organizing the upcoming annual conference and
  - Overseeing the activities of the Ad Hoc Committee until the end of the upcoming annual conference. The Executive Committee shall be a policy or planning committee. The work required to carry out its plan shall be performed by the Secretariat.
3. The Head of the Executive Committee shall give appropriate notices to, and confer with, the Chairman of the Conference concerning the progress of preparations for the subsequent conference.

#### **Article 8. (Ad Hoc Committee)**

Ad Hoc Committees may be established for planning, preparing, and implementing activities specifically designated by the Chairman as the main activities to be resolved by the CPBA.

#### **Article 9. (Finance)**

1. As a general rule, the Host Bar Association shall bear the costs arising from hosting the conference.
2. The President of each country's Bar Association and any other official participant in the conference shall bear their own travel and attendance expenses.

#### **Article 10. (Duration)**

The duration of the CPBA shall be perpetual.

#### **Article 11. (Secretariat)**

1. The President of the Bar Association hosting the subsequent conference shall appoint as the Secretariat as may person with as many functions as he deems necessary.
2. The Secretariat shall perform its various duties as directed by the Executive Committee.
3. The hosting Bar Association shall be responsible for the cost of the Secretariat.

#### **Article 12. (Amendment of Charter)**

This Charter may be amended by the affirmative vote of not less than two-thirds of the members present at the Conference.

#### **Addenda**

##### **Article 1. (Effective Date)**

This Charter shall take effect upon the approval by the affirmative vote of not less than two-thirds of the Members present at the 1991 Conference.

##### **Article 2. (Chairman)**

The President of the Bar Association sponsoring the Conference at the time of the adoption of this Charter shall act as the Chairman of the particular Conference in session.

# LAW COUNCIL OF AUSTRALIA – 2018 POLA COUNTRY REPORT

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## About the Law Council of Australia

The Law Council of Australia exists to represent the legal profession at the national level, to speak on behalf of its Constituent Bodies on national issues, and to promote 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 16 Australian State and Territory law societies and bar associations and the Law Firms Australia, which are known collectively as the Council's Constituent Bodies.

The Law Council's Constituent Bodies are:

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

Through this representation, the Law Council effectively acts on behalf of more than 60,000 lawyers across Australia.

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 the meetings of Directors, policies and governance responsibility for the Law Council is exercised by the elected Executive members, led by the President who normally serves a 12 month term. The Council's six Executive members are nominated and elected by the board of Directors.

Members of the 2018 Executive as at 1 January 2018 are:

- Mr Morry Bailes, President
- Mr Arthur Moses SC, President-Elect
- Mr Konrad de Kerloy, Treasurer
- Mr Tass Liveris, Executive Member
- Ms Pauline Wright, Executive Member
- Mr Geoff Bowyer, Executive Member

The Secretariat serves the Law Council nationally and is based in Canberra.

## Contacting the Law Council

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## Regulation of the Practice of Law in Australia

1. There are two key requirements to become an Australian legal practitioner:
  - (a) Admission to the legal profession by the Supreme Court of an Australian state or territory following acquisition of approved academic qualifications and practical legal training; and
  - (b) Granting of a practising certificate.
2. To be admitted to the legal profession, an applicant must demonstrate to an admitting authority that he or she:
  - (a) has approved academic qualifications (typically an approved law degree from an accredited university)
  - (b) has completed an approved course of practical legal training, through an accredited institution or through an approved traineeship or articulated clerkship, and
  - (c) is otherwise a fit and proper person to be admitted to the profession.
3. A person is admitted to the legal profession by the Supreme Court of a state or territory. The Supreme Court will consider the application and the recommendation or advice of the admitting authority about whether the applicant is eligible for admission and is a fit and proper person.
4. A person who has been admitted to the legal profession is generally called an Australian lawyer. He or she must then apply to a regulatory authority and be granted a practising certificate before becoming legally entitled to engage in legal practice. Once a person has been granted a practising certificate, they are called an Australian legal practitioner.
5. To be granted a practising certificate, an applicant must demonstrate to a regulatory authority that he or she:
  - (a) is an Australian lawyer, and
  - (b) is a fit and proper person to be granted a practising certificate.
6. A restricted practising certificate is the first kind of practising certificate issued. It entitles the practitioner to engage in legal practice only under the supervision of a practitioner who holds an unrestricted practising certificate. Normally, a person must hold a restricted practising certificate for two years before becoming eligible to apply for an unrestricted practising certificate.

### *Local admission on the basis of foreign legal qualifications*

7. Foreign lawyers can also apply to be admitted to the Australian legal profession on the basis of qualifications obtained outside Australia.
8. To become an Australian lawyer, a foreign lawyer must demonstrate that they have completed a tertiary legal qualification and that they have undertaken a formal training program that is substantially equivalent to the Australian requirements in terms of minimum duration, areas of study, skills, practice areas and values. In some cases, extensive experience in legal practice can be considered as a substitute for formal qualifications and training.
9. Further avenues for local admission to practise exist in New South Wales and Victoria. In these states, overseas trained legal professionals with sufficient legal skills and relevant experience gained from foreign law practice can seek exemption from the legal qualification and training requirements that are generally necessary for admission to the Australian legal profession.
10. Admission to the Australian legal profession in this way may be subject to conditions. These could include, for example, to be permitted to practice for a limited period of time, to practise only within their area of expertise, or to practise only under supervision.

### **Practice of Foreign Law in Australia**

11. Australia's regulation of foreign lawyers aims to facilitate the internationalisation of legal services in Australia by providing a hospitable framework for the practice of foreign law by foreign lawyers as a recognised aspect of legal practice in Australia.
12. Under legal profession legislation enacted in all Australian states and territories, there are no formal barriers for foreign lawyers providing legal services in relation to foreign law on a fly-in, fly-out basis. Australia enables foreign lawyers to practise foreign law in Australia to the extent that they are entitled to practise law in their home and/or other foreign jurisdiction, rather than on nationality of residential status.
13. Foreign lawyers working on a fly-in, fly-out basis, are entitled to come to Australia and act for their clients and provide legal services (for example in commercial negotiations, on transnational contracts, or international arbitrations), for a maximum period of 90 days in any 12 month period without any requirement to register with the legal profession regulatory body(s) in Australia.

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14. Foreign lawyers who wish to establish a commercial presence (an office) may do so through a simple registration process that is purely based on their right to engage in legal practice in one or more foreign jurisdictions. This involves registration with the local state or territory authority as an 'Australian-registered foreign lawyer'.<sup>1</sup> Registration typically takes less than three weeks.
  15. Once registered, a foreign lawyer is permitted to practise the law of those foreign jurisdictions in which the lawyer is appropriately qualified and international law. An Australian-registered foreign lawyer may also work in commercial association with Australian legal practitioners and/or other Australian-registered foreign lawyers.
  16. The only significant restriction which applies to a foreign lawyer is that they are not entitled to appear before a court or in proceedings before a tribunal or other body in which the rules of evidence apply. Foreign lawyers are, however, entitled to provide legal services in relation arbitration proceedings, or conciliation, mediation and other forms of consensual dispute resolution.
  18. On 6 October 2017, the Law Council made a submission the Australian Law Reform Commission's (ALRC) Inquiry into the Incarceration Rates of Aboriginal and Torres Strait Islander peoples. The ALRC's Final Report entitled 'Pathways to Justice' was tabled in the Australian Parliament on 28 March 2018.
  19. The Pathways to Justice report included 35 recommendations. Many of these recommendations echoed the views of the Law Council in its submission as well as the findings of the upcoming Justice Project report, including:
    - *Justice targets* - the Commonwealth Government, in consultation with State and Territory Governments, should develop national criminal justice targets to reduce the rate of incarceration of Aboriginal and Torres Strait Islander people and the rate of violence against Aboriginal and Torres Strait Islander people
    - *Justice reinvestment* - all levels of Government should provide support for the establishment of an independent justice reinvestment body to promote the reinvestment of resources from the criminal justice system to community-led, place-based initiatives
    - *Repeal mandatory sentencing* - all levels of Government should repeal legislation imposing mandatory or presumptive terms of imprisonment upon conviction of an offender that has a disproportionate impact on Aboriginal and Torres Strait Islander peoples
    - *Bail and sentencing options* - there should be a range culturally appropriate bail and sentencing options, including community-based sentencing options
    - *Interpreter schemes* - State and Territory Governments should work with relevant Aboriginal and Torres Strait Islander organisations to establish interpreter services within the criminal justice system where needed and monitor and evaluate their use, and
    - *Abolition of imprisonment for failure to pay fines* - fine default should not result in the imprisonment of the defaulter, and options should be developed which ameliorate the disproportionate effects of fines on Aboriginal and Torres Strait Islander people.

## Regular Activities Conducted by the Law Council

### Aboriginal and Torres Strait Islander legal issues

#### *Overrepresentation of Aboriginal and Torres Strait Islander Peoples in Incarceration*

17. Overrepresentation of Aboriginal and Torres Strait Islander peoples in incarceration remains a critical issue in Australia and is a key point of advocacy for the Law Council. Despite making up less than three per cent of Australia's adult population, Aboriginal and Torres Strait Islander people make up more than 27 per cent of Australia's prison population. The number of Aboriginal and Torres Strait Islander people in prison has grown at a significantly faster rate than that of the non-Aboriginal and Torres Strait Islander population over the past decade (70.5 per cent compared with 46.4 per cent) and Aboriginal and Torres Strait Islander people are now 12.5 times more likely than non-Aboriginal and Torres Strait Islander people to be incarcerated.

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1. See for example Legal Profession Act Uniform Law, Part 3.4.

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20. The Australian Government is currently considering its response to the Pathways to Justice report.

#### *Youth Detention*

21. More than half of all young people in detention are Aboriginal or Torres Strait Islander. Aboriginal or Torres Strait Islander young people aged 10–17 are 24 times more likely to be in detention than young people who are not Aboriginal or Torres Strait Islander.
22. The conditions and treatment of young people in detention has become a prominent issue in Australian public debate over recent years. This was particularly driven by an episode of the television program, *Four Corners*, which revealed alleged mistreatment and abuse of juvenile detainees in the Northern Territory's Don Dale Youth Detention Centre. The program sparked nation-wide concern and led to the commissioning of several independent reviews into the policies and practices of State and Territory juvenile detention centres. The most prominent of these inquires was the Royal Commission into the Protection and Detention of Children in the Northern Territory (NT Royal Commission).
23. The NT Royal Commission made more than 200 recommendations relating to the detention and child protections systems of the Northern Territory. These recommendations have been accepted, in-principle by the Northern Territory Government. Since, the release of the NT Royal Commission's Final Report, the Law Council has advocated for the national implementation of the recommendations, including for example, the recommendation to raise the age of criminal responsibility from 10 years of age to at least 12, and that no child under 14 should be sentenced to detention, except in the most serious cases.

#### *The Change the Record Coalition*

24. As part of its advocacy work regarding the overrepresentation Aboriginal and Torres Strait Islander people in incarceration, the Law Council actively engages as a member of the Change the Record Coalition. Change the Record is an alliance of leading Aboriginal and Torres Strait Islander, human rights, legal and community organisations advocating for urgent and coordinated national action to close the gap in imprisonment rates of Aboriginal and Torres Strait Islander people and to cut the disproportionate rates of violence experienced by Aboriginal and Torres Strait Islander people, particularly women and children.

25. On 17 November 2017, in response to the NT Royal Commission, *Change the Record* released the *Free to be Kids* National Plan of Action. The eight-point plan includes strategies to: support children and families to stay together; raise the age of criminal responsibility; set national justice targets; and invest in Aboriginal and Torres Strait Islander-led prevention and support programs.
26. The Law Council continues to play a role in the activities of *Change the Record* as it works towards addressing the overrepresentation Aboriginal and Torres Strait Islander people in incarceration.

#### *Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples*

27. Constitutional Recognition of Aboriginal and Torres Strait Islander peoples remains an ongoing issue of discussion. On 30 June 2017, the Referendum Council (a committee appointed by the Prime Minister, the Hon Malcolm Turnbull MP, and the Leader of the Opposition, the Hon Bill Shorten MP, to review and propose options for constitutional reform) provided its Final Report to Government.
28. The key recommendation of the Referendum Council was that 'a referendum be held to provide in the Australian Constitution for a representative body that gives Aboriginal and Torres Strait Islander First Nations a Voice to the Commonwealth Parliament'. This recommendation was based on one of the recommendations of the *Uluru Statement from the Heart*. The Uluru Statement was the key outcome of the 2017 National Constitutional Convention which was convened by the Referendum Council and brought together over 250 Aboriginal and Torres Strait Islander leaders from around Australia.
29. The Law Council has expressed its unqualified support for the recommendations of the Referendum Council. The Federal Government seemingly rejected the recommendations of the Referendum Council on 1 November 2017, a decision to which the Law Council has labelled profoundly disappointing.

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30. In March 2018, the Joint Select Committee on Constitutional Recognition Relating to Aboriginal and Torres Strait Islander Peoples was established by both houses of the Australian Parliament. This Committee has been tasked with considering the recommendations of the Referendum Council (2017), the Uluru Statement from the Heart (2017), the Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples (2015), and the Expert Panel on Constitutional Recognition of Indigenous Australians (2012), to recommend options for constitutional change and any potential complementary legislative measures. The Law Council made a submission to this inquiry on 15 June 2018. The Committee is due to produce a final report by 29 November 2018.

#### *Native Title*

31. 2018 marks the twenty-fifth anniversary of the High Court of Australia's landmark decision in *Mabo v Queensland (No 2)*, which rejected the doctrine of *terra nullius* applying in Australia and recognised pre-existing 'native title' rights. The Australian Attorney-General's Department is currently conducting a review of the *Native Title Act 1993* (Cth). The Law Council made a submission to this inquiry on 27 February 2018 and is currently awaiting the release of the inquiry's report.

#### **Criticism of the Judiciary and Tribunal Members**

32. On several occasions in 2017-18, members of the Australian Government have criticised members of the Australian judiciary and separately members of the Administrative Appeals Tribunal for supposed leniency and lack of independence. These criticisms have largely related to cases regarding immigration issues, alleged gang violence in immigrant communities and terrorism.
33. The Law Council has publicly noted that although informed public comment on judicial decisions (including by politicians) is an important part of normal public discourse, the recently established pattern of politicians attacking the motives and impartiality of the judiciary is dangerous and should be actively resisted. Therefore, the Law Council has taken on a responsibility to speak out against political attacks on the judiciary.
34. Following these criticisms of the judiciary, the Law Council has issued public comments through media releases and newspaper 'op-ed' articles expressing concern that such criticism erodes public confidence in the courts and tribunals and undermines the rule of law.

#### **Inclusion and Diversity in the Legal Profession**

##### *National Attrition and Re-engagement Study (NARS) Report*

35. In 2014, the Law Council released the final report of its National Attrition and Re-engagement Study (NARS). The NARS methodology included an online survey in Australia of practicing lawyers, lawyers who have left the profession and individuals who have completed legal studies but never practiced, in addition to in-depth interviews with self-nominated participants of the survey. Themes which emerged from the study included:
- (a) in private practice, women were more likely than men to work as employees, however men were twice as likely as women to be a partner (23% men; 11% women)
  - (b) of the women surveyed, half reported experiencing discrimination due to their gender (compared with one in 10 men)
  - (c) half of women working part-time reported discrimination due to family responsibilities versus 19% of women working full-time with family responsibilities
  - (d) there is a perception of conscious or unconscious bias against women who adopt flexible working arrangements to balance family responsibilities. Even where there was a range of flexible working arrangements available, women were concerned that taking them up would have a negative impact on career progression, and
  - (e) women who used flexible work arrangements reported negative impacts including:
    - (i) being allocated unsatisfying work
    - (ii) being passed by for promotion, and
    - (iii) dealing with colleagues' assumptions that their priorities lay outside work.
36. This combination of statistical and qualitative research underpins the development of effective and practical policy recommendations contained in the final report, and the analysis of findings includes recommendations for Law Societies, Bar Associations and law practices to assist in retaining women lawyers and to re-engage those who have left the profession.
37. In addition to the final NARS Report, the Law Council released a series of NARS Factsheets and a NARS Discussion paper which outlines areas identified by the NARS requiring particular focus. This presents proposals in relation to five

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key areas of need: career path transformation; leadership and role modelling; relationships and support; workplace safety; and transparency and measures of success.

38. Since the release of this report in 2014 and with the support of its Constituent Bodies and other stakeholders, the Law Council has developed and implemented the following several major national initiatives.

*Diversity and Equality Charter*

39. In May 2015, the Law Council's Diversity and Equality Charter was unanimously adopted by legal profession leaders at the Law Council.
40. The Charter is a statement of principles to acknowledge publicly a commitment to diversity and equality by the Australian legal profession. It is based on the principles of justice, integrity, equity and the pursuit of excellence upon which this profession is founded.
41. The Charter has since been adopted online by a number of law firms, barristers' chambers, individuals and other entities associated with the legal profession.
42. The Law Council has created a logo which can be used by those organisations who formally adopt the Charter to publicly acknowledge their commitment to its principles.
43. The Law Council's Diversity and Equality Charter has attracted 140 (92 organisations, 48 individuals) adoptions to date. A full list of individual counsel and legal organisations who have adopted the Charter is available on the Law Council's website.

*Equitable Briefing*

44. In June 2016, the Law Council launched the landmark new Equitable Briefing Policy (Policy) aimed at improving the briefing of women barristers in Australia. The policy includes interim and long-term targets with the ultimate aim of briefing women in at least 30% of all matters and paying 30% of the value of all brief fees by 2020. The Policy is intended to drive cultural change within the legal profession, support the progression and retention of women barristers, and address the significant pay gap and underrepresentation of women in the superior courts. The Policy is available for adoption by any briefing entity, including organisations and counsel in addition to clients of briefing entities operating in Australia.

45. The Secretariat, in consultation with the Bar Associations, Law Firms Australia and Law Societies finalised Guidelines designed to provide practical measures to facilitate the implementation of the Policy and information regarding the security and confidentiality of information provided by adoptees. The Secretariat also developed an online portal to improve the efficiency of the reporting process, enabling organisations and counsel to provide their annual report directly to the Law Council by 30 September following the end of each financial year.
46. The Law Council has since received overwhelming support for the Policy from the nation's leading large law firms, Bar Associations and Law Societies of Australia as well as many individual legal practitioners. The Policy has attracted 375 (278 individuals, 97 organisations) to-date. A full list of individual counsel and legal organisations who have adopted the Policy is available on the Law Council's website.
47. A draft report of outcomes and figures has been prepared for the 2016-17 Annual Report based on the first ever round of data collection, and is awaiting review by the Law Council Directors at their June meeting.

*Unconscious Bias*

48. In March 2017 the Law Council launched a landmark national training program customised for the legal profession to help counter unconscious bias - a major achievement for the profession.
49. The Law Council worked closely with diversity and inclusion specialists Symmetra to construct this unconscious bias programme which the Law Council's Constituent Bodies can make available to their members. The training is available to all lawyers and legal practices via face-to-face workshops, train-the-trainer modules, and an online<sup>2</sup> e-learning training course. The Continuing Professional Development (CPD) accredited workshops include an interactive exploration of unconscious cognitive biases and how they affect all decisions.

*Diversity and Inclusion Resources*

50. The Law Council has published several new webpages providing information on a range of inclusion and diversity topics.

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2. [diversityinlaw.com.au](http://diversityinlaw.com.au)

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51. LGBTI+ information and resources have been prepared in consultation with the Law Council's national Equal Opportunity Committee and provides tips and resources to assist workplaces in making their legal practice LGBTI+ friendly. The webpage includes information on the use of language relating to the LGBTI+ acronym, employer responsibilities, and why it's important to make your workplace LGBTI+ inclusive, and forms part of the Law Council's ongoing efforts towards achieving inclusion and diversity in the legal profession.
  52. Resources on bullying and harassment in the workplace have been prepared in consultation with the Equal Opportunity Committee. The webpage includes information on workplace bullying and harassment law and provides resources to address harassment and bullying in legal practice.
  53. The Law Council has also published information on flexible workplaces practices in the legal profession provides tips and resources to assist workplaces in developing flexible workplace policies and translating these policies into practice. The webpage includes information on what flexible workplace arrangements are, employer responsibilities and examples of flexible working arrangements.

#### **National Security and Counter-Terrorism laws**

54. The Law Council engages in advocacy and policy development in relation to federal criminal and national security issues on behalf of the Australian legal profession. The Law Council recognises the need for appropriate powers to effectively prevent, detect and prosecute those involved in terrorism, espionage and foreign interference. However, there is also a need to ensure that these laws are reasonable, necessary and proportionate to a legitimate purpose.
55. The Law Council's observation has been that much of the national security legislation presented to the Federal Parliament has included deficiencies affecting the reasonableness, necessity or proportionality of the measures proposed. The Law Council has therefore engaged closely in public consultation processes for national security legislation and its input has often resulted in amendments that address some of these concerns. The Law Council has also encouraged the Australian Government to engage more closely with the legal profession and other stakeholders during the development of national security and counter-terrorism policy and legislation.

56. In addition to the topics identified below, the Law Council has also engaged in advocacy relating an inquiry on the impact of new and emerging information and communications technology and the recent Identity-matching Services Bill 2018.

#### *Australian Security and Intelligence Organisation (ASIO) Questioning and Detention powers*

57. The Law Council was successful in securing key recommendations from the Parliamentary Committee on Intelligence and Security (PJCIS) regarding ASIO's questioning and detention powers. In line with the Law Council's position, the PJCIS recommended that ASIO's detention powers be repealed and the Government develop legislation for a reformed ASIO compulsory questioning framework. The Law Council intends to participate in the development of the new questioning power framework with the Australian Parliament.

#### *Espionage and Foreign Interference Laws*

58. In December 2017, the Australian Government introduced two key pieces of legislation: the Foreign Influence Transparency Scheme Bill 2017 and the National Security Legislation Amendment (Espionage and Foreign Interference) Bill 2017. In written submissions the Law Council raised concerns relating the whether the proposed changes in the Bills were necessary and proportionate.

59. The Law Council has been successful in securing some Government amendments relating to proposed secrecy offences and foreign influence legislation, that align with the Law Council's position.

#### *Engagement with the Independent National Security Legislation Monitor (INSLM)*

60. In October 2017, the Law Council made a submission to the INSLM regarding stop, search and seizure powers, declared areas, control orders, preventative detention orders and continuing detention orders. The Law Council expressed concerns regarding the consistency of these regimes with Australia's international human rights obligations. The Counter-Terrorism Legislation Amendment Bill (No. 1) 2018 reflects a number of Law Council recommendations.
61. The Law Council is currently making a submission to the INSLM on the prosecution and sentencing of children for Commonwealth terrorist offences.

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### Transnational Practice

62. A priority for the Law Council is to gain improved access for Australian lawyers internationally through:
- (a) Targeted engagement with counterpart peak bodies and governments in priority countries
  - (b) Ensuring that legal services market access remains a priority area of focus for the Australian government (i.e. to keep legal services market access “front and centre” on the agendas of the Trade Minister, Attorney-General and trade negotiators in their engagement with priority markets), and
  - (c) Strengthening, influencing and shaping the legal services market access negotiation position of the Australian government with the aim of winning meaningful access for Australian lawyers under trade agreements.

#### *Transnational Legal Services Underpins Cross-Border Trade*

63. There are two main areas of transnational legal practice: advice in the context of commercial transactions and dispute resolution services. In both areas, there is a growing demand for fully integrated legal services (i.e. legal services that integrate advice on local, foreign and international law) led by sophisticated international clients involved in cross border trade and development.
64. The availability of fully integrated legal services is underpinned by the implementation of a system of regulation that permits local and foreign lawyers to work together flexibly, to provide advice on local and foreign law.
65. While profit from trade in legal services is important to individual lawyers and firms, there is a broader national interest in enhancing the availability of transnational legal services as these services underpin trade across the economy. Improvements to the conditions of access for lawyers into overseas markets can therefore have a broader impact on overall trade volumes and the availability of foreign investment.

#### *Law Council's Best Practice Principles*

66. The Law Council's approach to advocating for enhanced access for foreign lawyers can be distinguished from that taken by other countries. The Law Council has focussed on moving beyond a 'laundry list' of concessions typically demanded by foreign lawyers to focus on discussing the practical aspects of implementing a hospitable foreign lawyer regime and the policy justifications for doing so.

67. This approach is founded upon the Law Council's *Best Practice Principles for the Regulation of Foreign Lawyers and Transnational Law Practice*. These provide a neutral, principles based framework for the implementation of “viable and hospitable” regulations for the practice of foreign law. They have their genesis in the International Bar Association's 1998 resolution on the regulation of foreign lawyers and based on extensive research on regulatory systems and input from both law firms and their clients.
68. The Best Practice Principles do not prescribe a particular method of regulating foreign lawyers. Given the wide diversity of legal systems and regulations for the practice of domestic law, it is simply unrealistic to insist that each country should regulate foreign lawyers in the same way.
69. The Law Council champions the Best Practice Principles because it believes that the principles can both:
- (a) Guide the introduction of new foreign lawyer regulations for countries that don't yet allow the practise of foreign law, and
  - (b) Support improvements to regulations governing the practice of foreign law in all countries.
70. The Principles suggest a framework that allows foreign lawyers to provide effective transnational legal services, while:
- (a) Preserving the rights of local lawyers to practice local law
  - (b) Providing the right balance between maintaining local standards and the high standards of practice and professionalism required of foreign lawyers in their country of registration, and
  - (c) Ensuring that foreign lawyer regulations are viable and hospitable, that is a practical and non-burdensome regulatory regime.
71. The *Best Practice Principles* have also been substantially replicated in the Professional Services Annex of the Cross-Border Trade in Services Chapter of the *Comprehensive and Progressive Agreement for Trans Pacific Partnership Agreement (TPP-11)*. This is the first time that such principles on the regulation of any profession has been included in a treaty level trade agreement.

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## Developments and Challenges in 2017-18

### Business and Human Rights Training Pilot Program

72. A survey carried out by the International Bar Association, supported by the Law Council, found low levels of awareness or knowledge of business and human rights among the Australian legal profession, despite strong interest in the area. The training is especially relevant given the Australian Government is set to introduce a Modern Slavery Act into Parliament later in June. It is anticipated that this Act will introduce new reporting requirements for a large number of Australian companies and that the legal profession will have an important role in advising these companies on these, and other, new obligations.
73. The Law Council has therefore assisted the International Bar Association to pilot its business and human rights training for the legal profession in Australia.
74. Participants were granted access to online resources especially developed for the course by two Australian academics, and two half-day face-to-face training sessions were held in Sydney and Melbourne in May 2018. Participants also had the opportunity to hear from high-profile speakers from QANTAS and Konica Minolta, leaders in the field of corporate social responsibility.
75. The sessions were great successes, with excellent feedback received from participants. The Law Council is now considering other opportunities to extend the training beyond the pilot programme.
76. More than 65 people attended the sessions, which were an international first, focused on preparing members of the legal profession in Australia to advise clients on business and human rights issues at home and abroad. The Sydney session, hosted at Norton Rose Fulbright by Justine Nolan, Associate Professor from the Faculty of Law at the University of New South Wales, was opened by Andrew Finch, General Counsel of Qantas, who spoke to participants about the value of business and human rights to Qantas.
77. The Melbourne session, held at the Victorian Bar Association, was hosted by Jo Ford, Associate Professor at the Australian National University. The session was opened by Suzie Brett, People and Legal Director for Konica Minolta Business Solutions Australia. Suzie spoke about the importance of 'doing the right thing' at Konica Minolta and the ethical sourcing provisions Konica Minolta inserts into their contracts, as well as the resources they share with other businesses to promote human rights in business.

78. The International Bar Association plans to deliver the training internationally in coming months.

### Federal Circuit and Family Law Court of Australia

79. On 30 May 2018, the Attorney-General announced the Australian Government's intention to bring forward legislation for structural changes to the federal courts (excluding the High Court of Australia).
80. Under the legislation, a new Federal Circuit and Family Court of Australia (FCFCA) will be established from 1 January 2019 through the amalgamation of the Federal Circuit Court of Australia and the Family Court of Australia.
81. A new Family Law Appeal Division in the Federal Court of Australia will also be established to hear all appeals in family law matters from the FCFCA (and some appeals from the Family Court of Western Australia).
82. The stated aims of the reforms are to help Australian families resolve their disputes faster by improving the efficiency of the family law system, reducing the backlog of matters before the family law courts, and driving faster, cheaper and more consistent dispute resolution.
83. This announcement does not have any immediate effect on matters currently before the courts. Transitional arrangements will be put in place for those matters that are before the courts at the time of the commencement of the reforms to minimise any delay or inconvenience to parties.
84. On 30 May 2018, the Law Council issued a media release on the proposed reforms warning that greater detail was needed and noting the Law Council would support any constitutionally valid reforms which have the effect of reducing delays and improving efficiencies for families.
85. The Law Council has known for some time that the court system is in crisis, ultimately costing Australian families who have been denied access to justice.
86. Waiting times of up to three years in the Family Court to finalise cases which involve disputes around children and property and allegations of family violence is unacceptable.
87. Urgent reform has been needed to begin to get the system back on its feet, however decades of chronic underfunding of the court system and legal aid has largely contributed to the lengthy delays and backlogs experienced today.

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88. The increasing number of self-represented people appearing before the courts also contributes to the time that courts take to deal with matters and leads to unjust outcomes.
  89. Further investment in the courts and legal aid is still required to deliver the best outcomes for children and Australian families.
  90. The Law Council will consult with the profession regarding the proposal and work with the Australian Government throughout the implementation of the reforms. The Law Council will also continue to participate in the ongoing Australian Law Reform Commission's Review of the Family Law System.

#### **Inquiry into Class Action Proceedings and Third-Party Litigation Funders**

91. On 11 December 2017, Senator the Hon George Brandis QC, then Attorney-General of Australia, provided Terms of Reference to the ALRC for an inquiry into class action proceedings and third party litigation funders.
  92. On 31 May 2018, the ALRC released the Discussion Paper which contains a number of proposals and questions for consideration. Key proposals of interest to the Law Council include:
    - a proposal that the Law Council oversee the development of a specialist accreditation scheme for solicitors in class action law and practice, and
    - proposals related to the lifting of the current prohibition on percentage-based contingency fee arrangements.
  93. The Law Council is currently liaising with its Constituent Bodies, Sections and advisory committees and will make a submission to this inquiry. Submission are due by 30 July 2018.
96. Each year, one in four Australians will experience a legal problem substantial enough to require a lawyer. However, some sections of the community are much more vulnerable than others. Less than one-tenth of people account for approximately two-thirds of legal problems.
  97. For many, their problems are left unresolved. Over time, these problems can escalate, with serious consequences to people's health, finances and relationships.
  98. The Law Council has consistently expressed its strong concerns about the poor state of funding for legal assistance services in Australia, which are critical to providing access to justice for those who cannot afford a lawyer.
  99. Access to justice is a bedrock principle for our society and a means of protecting, promoting and defending the rule of law and human rights of all people. It is a core tenet of our modern democracy, yet unfortunately there are many who are missing out. A person's formal right to justice and equal treatment before the law is of no value if he or she cannot effectively access the legal system or secure protection of basic rights. Whether it is the pressures upon court resourcing and long backlogs, lack of access to legal advice or representation, or laws and practices that compound unfairness and disadvantage, the inequity experienced by many can have a devastating impact upon their lives.
  100. This means that it is more important than ever to understand how those who experience multiple forms of disadvantage experience access to justice issues, and what more needs to be done.
  101. The Project aims to build the case for new justice strategies and law reform secured by appropriate funding. It focuses in particular on identifying 'what works' and why, based on existing evidence, highlighting the data gaps and providing constructive, informed recommendations for future action.

#### **The Justice Project**

94. The Law Council believes that the system which delivers access to justice should be:
  - (a) fair
  - (b) just in the results that it delivers
  - (c) accessible to the people who need to use it
  - (d) responsive to their needs, and
  - (e) properly resourced.
95. The Law Council is concerned that many Australians simply 'fall through the cracks' of the justice system.

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*Scope*

102. The Law Council is conducting a comprehensive national review into the impediments to justice in Australia, focusing on those facing significant social, economic and other disadvantage in our community, including:

- (a) Aboriginal and Torres Strait Islander peoples
- (b) people with disability
- (c) older persons
- (d) people experiencing economic disadvantage
- (e) people who are homeless
- (f) children and young people
- (g) prisoners and detainees
- (h) those who are trafficked or exploited
- (i) LGBTI+ people
- (j) recent arrivals to Australia
- (k) asylum seekers
- (l) those who experience family violence, and
- (m) those residing or working in regional, rural and remote areas of Australia.

103. The Project draws from, and supplements, the considerable body of work already undertaken in this area. It illustrates the social and economic impacts and costs to the community of failing to deliver justice outcomes.

*Literature Review and Consultation Phase*

104. In August 2017, 13 Justice Project consultations papers and an overarching introductory paper were released online. This consisted of over 800 pages of research presenting the existing access to justice literature on the 13 disadvantaged groups identified in the Project's Terms of Reference.

105. Following the release of these papers, the then-President Ms McLeod SC and/or alternate members of the Law Council Secretariat commenced a two-month consultation period, including both formal meetings and field visits in regional and urban areas. Consultations included strong engagement with constituent bodies, as well as legal aid commissions, community legal centres, Aboriginal and Torres Strait Islander legal services, peak bodies, court and tribunal staff and community elders. Depending on access and availability, teleconferences were held rather than face-to-face meetings. Consultations

were also held with expert groups appointed through the nominations from constituent bodies and committee members. Approximately 150 meetings were held in total.

106. Throughout August and September, the Law Council received 129 submissions from individuals and organisations, addressing all 13 groups in the Terms of Reference. These submissions are generally available on the Law Council's website, subject to privacy and confidentiality issues.

*Progress Report and National Press Club Event*

107. In March 2018, the Law Council held a National Press Club event, 'Justice - State of the Nation'. The event, which featured current President Mr Morry Bailes and past-President Ms Fiona McLeod SC, included a core focus on the Project's findings to date and some of its early recommendations.

108. The Progress Report was released at the National Press Club event. It provided an overview of the key themes and findings which emerged from the Project's consultations.

*Final Report and Recommendations*

109. The Project will culminate in a final report, with an anticipated release date in August 2018. The Final Report will incorporate input from submissions and consultations, and synthesise research contained in the Justice Project Consultation Papers.

110. The Final Report will include a set of general recommendations, alongside specific priorities for each of the 13 Justice Project groups. The Justice Project has identified three 'early recommendations' prioritising the need for:

- (a) a whole-of-government approach to access to justice issues:
  - (i) Access to justice is relevant to the objectives of a range of portfolios - from policy measures which are aimed at closing the gap, to supporting families at risk, to strengthening rural communities, to achieving better health outcomes, to supporting women's equality. The Justice Project has recommended that Australia must move beyond thinking about justice issues within the silos of law enforcement, courts and legal services and embed access to justice within multi-disciplinary policy and funding frameworks.

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- (ii) Effective policy for the justice system will therefore require consideration of the social and economic aspects of disadvantage, and vice-versa. Access to justice should be embedded into whole-of-government policy thinking as an integral part of the broader policy mix required to address complex social problems.
- (b) the introduction of Justice Impact Tests for government policies:
- (i) An important first step, and a key recommendation of the Justice Project, will be the introduction of Justice Impact Tests to better account for the downstream impacts of new laws and policies on the justice system, to ensure its smoother operation and to better help disadvantaged groups.
  - (ii) Justice Impact Tests have been introduced in the United Kingdom. These require all government policy officials to consider and plan for the impact of all government policy and legislative proposals, across all government portfolios, on the justice system. This includes consideration of the impacts on legal aid, courts, tribunals and the judiciary, prosecuting bodies, prisons and youth justice systems. The test incorporates a departmental accountability principle – meaning that there is a presumption that the policy-owning department will meet any additional costs flowing to the justice system from its proposals. The Law Council also considers that Justice Impact Tests are also desirable to support good governance and appropriate expenditure of public money.
  - (iii) Stakeholders participating in the Justice Project consultation process have consistently indicated strong support for a measure of this kind.
- (c) substantial investment into the justice system:
- (i) The Justice System is severely under-resourced and significant additional funding is required to ensure the system operates justly and fairly.
  - (ii) Analysis prepared by PricewaterhouseCoopers (PwC) for the Law Council found that the Australian Government’s share of funding contributions to Legal Aid Commissions has fallen from 55 percent of total funding in 1996-97 (with the remaining 45 percent covered by state grants and interest from public purpose funds) to 32 percent in 2016-17. PwC estimates that in the 2017-18 financial year, real per capita legal aid funding from the Commonwealth will fall to its lowest recorded level, \$8.40 (down from \$11.55 in 1996-97).
  - (iii) One measure of the cumulative effect of reduced funding for legal assistance is that federal funding for legal aid has declined to such an extent that despite the fact that around 14 percent of Australians live below the poverty line, just eight percent of all Australian households now qualify for legal aid.
  - (iv) The Law Council estimates that at least \$390 million of additional funding per annum is required for the legal assistance system – criminal and civil – to respond to current levels of unmet demand. This includes the \$200 million per annum which was recommended by the Productivity Commission as an urgent interim measure to address civil legal needs alone; a recommendation which has not been implemented.
  - (v) Going forward, the development of national objectives for the provision of legal assistance services could help to identify a minimum proportion of Australians who should be eligible for these services, having regard to their different nature and objectives.
  - (vi) The objective of this approach is to establish a fair and appropriate level of coverage for those who need it. It stands in contrast to the present approach, where funding is allocated without ensuring this will be sufficient to provide legal assistance to all who need it. This approach has allowed an inadequate and unsustainable level of funding to become an entrenched characteristic of Australia’s legal assistance sector.

- (vii) Governments must also tackle key pressures in Australia's court systems, which are resulting in chronic delays. For example, due to significant under-resourcing and in particular, the under-provision of judges, the Federal Circuit Court is failing to meet efficiency targets. In 2016-17, 68 per cent of final order applications were disposed of within 12 months. This result falls below the target 90 per cent of final order applications disposed of within 12 months.

#### **Legal Assistance and Federal Courts Funding**

111. In March 2018, the Australian Senate overwhelmingly passed a motion calling for adequate funding of the Federal Circuit Court and the Family Court, where parties can be forced to wait up to three years before final hearing. The Law Council issued a media release welcoming the motion.
112. Similarly, on 10 May 2018, the Australian Senate passed a motion calling on the Australian Government to reverse the downward trend in legal aid funding. The Law Council issued a media release welcoming the motion.
113. The Law Council was instrumental in the development of both Senate motions and will continue to work with the Australian Parliament to try and convert this overwhelming support into funding outcomes.
114. On 8 May 2018 the Australian Government handed down the Federal Budget for 2018-2019. In the previous year, 'new' funding was provided to community legal centres (CLCs) and Aboriginal and Torres Strait Islander Legal Services (ATSILS), totalling \$55.7 million (\$39 million for CLCs and \$16.7m for ATSILS).
115. It appears that no new funding will be provided to CLCs and ATSILS this financial year. The most disadvantaged individuals with legal problems will continue to be negatively impacted by the underfunding of CLCs and ATSILS.
116. In addition, the Budget did not allocate any additional funding for Legal Aid Commissions, which have been chronically underfunded by successive governments.
117. The Law Council is disappointed that the Australian Government has not prioritised legal aid funding in the Budget and will continue to campaign on this matter. In the lead up to the next Federal Election, the Law Council will call on all parties to commit to a major increase in funding for legal aid services.

#### **Legal Futures Symposium**

118. The Law Council of Australia will hold a one-day summit on Thursday 13 September 2018, drawing together thought leaders from within and outside of the Australian legal profession to discuss and deliberate upon key emerging national and international issues that might shape and influence the future of the Australian legal profession over the next decade.
119. The outcomes of the Summit will assist the Law Council identify the areas of future policy focus that it should prioritise, so that the legal profession is at the forefront by having an actionable future vision for the legal profession. It is envisaged that the Summit will be attended by leaders of the profession and other fields.
120. A Steering Committee has been formed that will guide the development of an Issues Paper including a chapter on each major theme to be addressed at the Summit.
121. While the identification of material for the Discussion Paper will be a matter for the Steering Committee, the main themes will likely canvass issues like the impact of technologies (such as artificial intelligence) on legal services and how they are to be delivered; the changing demographics of the legal profession; impacts of emerging and future technology on judicial processes; the goals and expectations of legal practitioners of the future; the emergence of alternative (and so far, unregulated) providers of legal information and services; fragmentation (or unbundling) of legal services; and innovation imperatives to improve access to justice.

#### **National Redress Scheme for Institutional Child Sexual Abuse**

122. In the first six months of 2018, the Law Council has been actively engaging in policy development in relation to the creation of a national redress scheme for institutional child sexual abuse. The scheme is a response to the recommendations of the earlier Royal Commission into Institutional Responses to Child Sex Abuse, which released its final report in December 2017.

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123. The Law Council provided detailed submissions in relation to the original legislative proposal contained in the Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017, advocating for a redress scheme that reflected the following principles, namely that it must:

- (a) provide a fair, expeditious and transparent process for responding to claims
- (b) be simple and clear for survivors and their families
- (c) not create unnecessary barriers for survivors
- (d) have safeguards to ensure that it does not become mechanistic and undermine the efficacy of any pastoral response the survivor may be seeking, and
- (e) not impede any other legal rights enjoyed by survivors, including civil justice mechanisms.

124. The Law Council raised a number of concerns with the initial proposal, and a second legislative attempt was introduced by the National Redress Scheme for Institutional Child Sexual Abuse Bill 2018. The Law Council has again made submissions to this Bill in June 2018, and will continue to advocate for a scheme that provides a strong source of redress for survivors of past institutional child sexual abuse.

#### **Modern Slavery in Australia**

125. On 28 June 2018, the Australian Government introduced a Modern Slavery Bill into Parliament. If passed, the new law will apply to more than 3,000 large corporations and other entities to publish annual public statements on their actions to address modern slavery in their supply chains and operations.

126. The Law Council has welcomed this development but notes the need to include penalties for failure to comply with reporting obligations. The Bill has also failed to respond to the Law Council's call to establish an Anti-Slavery Commissioner and a national compensation scheme for victims of human trafficking.

127. The Law Council considers addressing modern slavery to be of paramount importance and has been supportive of the establishment of a Modern Slavery Act in Australia, particularly the inclusion of robust reporting requirements.

128. The Law Council's advocacy on this topic includes submissions to the Joint Committee on Law Enforcement Inquiry into Human Trafficking, and the Committee's Inquiry into Slavery, Slavery-like conditions and People Trafficking. The Law Council has also published a report in conjunction with Anti-Slavery Australia on *Establishing a National Compensation Scheme for Victims of Commonwealth Crime* in relation to victims of human trafficking.

129. Eliminating slavery and slavery-like conditions is a global priority and is reflected in commitments set out in international instruments, including the following to which Australia is a party:

- (a) the United Nations Convention against Transnational Organized Crime, including the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children
- (b) the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- (c) the United Nations Declaration on the Basic Principles of Justice for Victims of Crime and Abuse of Power
- (d) the International Covenant on Civil and Political Rights, and
- (e) the Convention on the Elimination of All Forms of Discrimination Against Women.

130. In addition, both the United Nations Guiding Principles on Business and Human Rights and Organization for Economic Cooperation and Development Guidelines for Multinational Enterprises set out standards and guidelines for companies to ensure they are not violating human rights, including by profiting from modern slavery, in their operations and supply chains.

