Law Council
OF AUSTRALIA

2023–24 Pre-Budget Submission

The Treasury

3 February 2023

Telephone +61 2 6246 3788 • *Fax* +61 2 6248 0639
Email mail@lawcouncil.asn.au
GPO Box 1989, Canberra ACT 2601, DX 5719 Canberra
19 Torrens St Braddon ACT 2612
Law Council of Australia Limited ABN 85 005 260 622
www.lawcouncil.asn.au

Table of Contents

About the Law Council of Australia **3**
Acknowledgement **4**
Executive Summary **5**
Legal Assistance Sector **8**
Family law system **10**
Rural, regional and remote communities **12**
Federal Judicial Commission **12**
Funding of the Federal Courts **13**
Migration law caseload in the FCFCOA 14
Increasing the electoral participation of First Nations people prior to the referendum on the Voice to Parliament **15**
Elder law and elder abuse **16**
Modern slavery and trafficked and exploited people **18**
Migration reform **20**
Optional Protocol to the Convention Against Torture **21**
Agency Resourcing **21**
Office of the Australian Information Commissioner 21
Australian Human Rights Commission 22
Developing and strengthening the legal profession in the South Pacific region **22**
Pacific Islands Legal Information Institute 22
Support for Independent Legal Professional Bodies in the Pacific 24

About the Law Council of Australia

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

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

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

Through this representation, the Law Council acts on behalf of more than 90,000 Australian lawyers.

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

The members of the Law Council Executive for 2023 are:

- Mr Luke Murphy, President
- Mr Greg McIntyre SC, President-elect
- Ms Juliana Warner, Treasurer
- Ms Elizabeth Carroll, Executive Member
- Ms Elizabeth Shearer, Executive Member
- Ms Tania Wolff, Executive Member

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

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

Acknowledgement

The Law Council is grateful for the contributions of the following Law Council Constituent Bodies, Sections and Advisory Committees in the preparation of this submission:

- Law Institute of Victoria;
- Law Society of New South Wales;
- Law Society of South Australia;
- Law Society of Western Australia;
- Queensland Law Society;
- Family Law Section;
- Access to Justice Committee;
- Business and Human Rights Committee;
- National Elder and Succession Law Committee; and
- National Human Rights Committee.

Executive Summary

1. The Law Council is grateful for the opportunity to provide this submission to the Treasury for consideration in preparing the 2023–24 Federal Budget.

2. Key recommendations from the Law Council contained in this submission are as follows:

   - The Australian Government should provide a significant and ongoing increase in the funding of the legal assistance sector of at least $300–$400 million per annum, including:
     - increased federal funding for Legal Aid Commissions (**LACs**) across criminal, civil, and family law matters, restoring the Commonwealth share of funding to 50 per cent; and
     - additional, ongoing, and evidence-based resourcing for Community Legal Centres (**CLCs**), Aboriginal and Torres Strait Islander Legal Services (**ATSILS**), and Family Violence Prevention and Legal Services (**FVPLS**).
   - The Australian Government should introduce Justice Impact Tests to facilitate the smoother development of laws and policies that have downstream impacts on the justice system and legal need.
   - Alongside legislative reform proposals to improve the family law system, the Australian Government should provide additional funding:
     - for family law services provided by LACs—including to increase the availability of legal aid grants and support specific programs such as Independent Children's Lawyers (**ICLs**)—and the legal assistance sector more broadly; and
     - to ensure that appropriate resourcing is provided to the Federal Circuit and Family Court of Australia (**FCFCOA**) to meet its substantial ongoing demands.
   - The Australian Government should allocate adequate, long-term funding for legal assistance services in rural regional and remote (**RRR**) communities and investigate funding for the development of incentive programs that encourage lawyers to take up employment in these communities.
   - Working with state and territory governments, the Australian Government should commission a full review of the resourcing needs of RRR communities in relation to interactions with the justice system, with a commitment to then addressing those needs.
   - The Australian Government should establish and adequately resource a Federal Judicial Commission to deal with any allegation of lack of competency, serious misconduct or corruption in the federal courts and tribunals. The Federal Judicial Commission should also support the provision of education, training and support for judicial officers.
   - The Australian Government should increase the baseline resourcing of the federal courts including by:
     - appointing additional judges and tribunal members;
     - promptly filling vacancies;
     - providing increased resources for registries;

  - improving relevant technology and infrastructure; and
  - improving court services in rural, regional and remote areas.
- Accompanying measures already announced to support the Administrative Appeals Tribunal (**AAT**) to address its existing backlog of matters, the Australian Government should provide additional funding to the federal courts, —Division 2 of the FCFCOA, in particular—to address the increasing migration caseload backlog.
- Ahead of the proposed referendum on a First Nations Voice to Parliament, the Government should consider additional measures, led by Aboriginal Community Controlled Organisations and other community organisations to support raising the electoral participation of First Nations People and ensure the timely availability of accurate, fair, and impartial information.
- The Australian Government should provide appropriate, sustained and increased funding for specialist legal assistance and aged care advocacy services that work towards reducing elder abuse.
- In collaboration with the state and territories, the Australian Government should support the harmonisation of enduring powers of attorney laws.
- The Australian Government should fund a review of the regulatory framework in relation to superannuation death benefit nominations.
- The *Modern Slavery Act 2018* (Cth) (**Modern Slavery Act**) should be amended to provide for an Anti-Slavery Commissioner, as an independent Commonwealth office-holder, responsible for the performance of key regulatory measures—education, assessment, and advice. The Commissioner should be supported by appropriate funding to perform these functions.
- The Australian Government should commit additional funding, matched by state and territory government contributions, to ensure that people who are trafficked and exploited can access specialised legal assistance services and qualified interpreters, including in RRR areas.
- Subject to the outcome of the statutory review of the Modern Slavery Act, the Australian Government should at least commit funding to a study or inquiry into the establishment of a federal compensation scheme for victims of modern slavery.
- The Australian Government should commit funding to the development of a National Action Plan on Business and Human Rights to provide a coordinated means to give effect to its commitment to the Guiding Principles on Business and Human Rights (**UNGPs**).
- The Australian Government should commit funds to give effect to its commitment to abolish temporary protection visas and safe haven enterprise visas.
- The Australian Government should commit funds to further its reform agenda to the migration system generally, particularly the Skilled Migration Program.
- The Australian Government should contribute an appropriate share of funding to ensure the establishment of National Preventive Mechanisms (**NPMs**) in all domestic jurisdictions and full implementation of the Optional Protocol to the Convention Against Torture (**OPCAT**) in general.
- The Australian Government should substantially increase the funding of the Office of the Australian Information Commissioner (**OAIC**) to ensure that it can

perform its enhanced functions under the *Privacy Legislation Amendment (Enforcement and Other Measures) Act 2022* (Cth).

- The Australian Government should ensure that Australian Human Rights Commission (**AHRC**) is adequately resourced to effectively carry out its investigation, complaint and conciliation functions and its function of enhancing public education and human rights resources.
- The Australian Government should provide adequate funding to enable the continued operation of the Pacific Islands Legal Information Institute (**PacLII**).
- The Australian Government should provide funding to strengthen and support the activities and development of legal professional associations in the South Pacific, including by working in collaboration with existing initiatives of the Law Council and the South Pacific Lawyers' Association (**SPLA**).
- The Australian Government should provide funding for specialised training for legal practitioners in the South Pacific region to be delivered through the SPLA.

Introductory comments

3. The Law Council acknowledges the current economic challenges faced both domestically and globally at the present time. In this context it may seem counter-intuitive to seek additional investment in our justice system. However, as set out in this submission, there has never been a more critical time to ensure there are adequate levels of access to justice across the community, in addition to well-resourced institutions to promote and uphold the rule of law.

4. The Final Report of the Law Council's Justice Project summarised the impact of underinvestment in the justice system and the personal, community, social and economic costs when people cannot access justice. These include, for example:

   - unresolved problems escalating from civil or family matters, to criminal matters;
   - an inability to resolve mounting debts, fines or payments, resulting in poverty and/or eviction and homelessness; and
   - women and children remaining at risk of harm, violence and exploitation.[1]

5. These scenarios clearly have broader cost implications—such as to health, housing, social services and welfare, child protection, families, corrections, policing and justice portfolios. They also entrench disadvantage and intergenerational cycles of poverty, violence and harm—with opportunity costs to all Australians given the loss of healthy, productive and vibrant communities.[2]

6. The upfront cost of investment in key services which are necessary to ensure access to justice—including legal assistance, but also other critical areas such as courts and tribunals, interpreters, disability advocates, early intervention and prevention programs, diversionary programs and bail or post-parole accommodation—should be viewed in the wider context of their potential to reduce other community costs, many of which dwarf the expenditure called for in the Justice Project's recommendations.[3] The Law Council's submission seeks to identify a number of important areas in which increased investment by the Australian

[1] Law Council of Australia, *The Justice Project: Final Report – Introduction and Overview* (August 2018) 18-19.
[2] Ibid.
[3] Ibid.

Government, necessary to improve access to justice outcomes and to promote and uphold the rule of law, might be directed.

Legal Assistance Sector

7. Most Australians will experience several interactions with the legal system throughout their lifetime. People experiencing disadvantage are often more vulnerable to legal problems and frequently have greater, and more complex legal needs than the general population. However, despite having disproportionate interactions with the justice system, Australians experiencing disadvantage are often the least able to respond effectively (both in terms of financial resources and legal capability).

8. Each of the four publicly funded legal assistance services (LACs, CLCs, ATSILS and FVPLS) play an important, unique and complementary role in providing legal help to people across Australia.

9. The downstream savings created by investment in the legal sector have been regularly recognised. In 2014, the Productivity Commission recognised the net public benefits to the community of legal expenditure and the 'false economy' of not doing so, given that the costs of unresolved problems are often shifted to other areas of government spending such as health care, housing and child protection.[4] The International Bar Association and the World Bank Group's 2019 analysis of global legal assistance systems found that investment in these systems generates downstream savings of between 2.3 (housing advice) and 8.8 (welfare systems advice) times the investment.[5]

10. As noted above, the Law Council's Justice Project also highlighted the costs (personal, community, social and economic) that arise and/or grow when people cannot access justice and the broader cost implications across a wide range of government portfolios.[6]

11. The Law Council recognises that in the 2022–23 Budget, the Australian Government directed a number of important funding measures to the legal assistance sector without addressing the continued critical underinvestment in the baseline funding of legal assistance services. This included, for example, an additional $40.7 million in resourcing for LACs (over four years from 2021–22) under the National Legal Assistance Partnership (**NLAP**) and as direct funding. This incorporates $16.5 million over two years from 2021–22 to support LACs to meet the cost of legal representation, including in the FCFCOA.

---

[4] Productivity Commission, *Access to Justice Arrangements* (Inquiry Report No 72, 2014) 30-31.
[5] International Bar Association and World Bank Group, *A Tool for Justice: A Cost Benefit Analysis of Legal Aid* (2019) 19.
[6] Law Council of Australia, *The Justice Project: Final Report – Legal Services* (August 2018) 18. While the global justice evidence base is not well resourced, international studies also support findings that unresolved legal problems have social, economic and health consequences. See, eg, Pascoe Pleasence et al, 'Mounting Problems: Further Evidence of the Social, Economic and Health Consequences of Civil Justice Problems' in Pascoe Pleasence, Alexy Buck and Nigel J Balmer (eds), *Transforming Lives: Law and Social Process* (The Stationary Office, 2007) 67; Graham Cookson and Freda Mold, *The Business Case for Social Welfare Advice Services - An Evidence Review: Lay Summary* (University of Surrey, July 2014) 1; Citizens Advice Bureau, 'Towards a Business Case for Legal Aid' (Paper presented at the Legal Services Research Centre's Eighth International Research Conference, July 2010) 2; Laura K Abel and Susan Vignola, 'Economic and Other Benefits Associated with the Provision of Civil Legal Aid' (2010) 9 *Seattle Journal for Social Justice* 1, 139-167.

12. While these initiatives are welcome, they are impermanent and fail to address the significant and ongoing shortfall in baseline funding for the legal assistance sector which is leaving many Australians without the help they need.

13. The Law Council considers current Commonwealth funding levels under the NLAP to be approximately half of the level required to meet demand on the sector. In its Call to Parties document released prior to the 2022 Federal Election, the Law Council estimated that a significant and ongoing increase in the funding of the legal assistance sector of at least $300 million–$400 million per annum is required (even factoring in the additional money provided under the NLAP and other initiatives).[7]

14. In preparing this submission, the Law Council has had the opportunity to view the submission of National Legal Aid (**NLA**) which represents the eight state and territory legal aid commissions in Australia. In that submission, NLA notes that an increase in baseline funding of $382 million per annum by 2025 is required.[8] This would include $168.3 million in immediate investment to continue funding to a number of important current programs and expand the number of services that LACs are able to provide (with particular focus on family law access for women and children escaping domestic and family violence).[9]

15. It is important to note that the above requests from NLA would only seek to address the funding shortfall for LACs. CLCs, ATSILS and FVPLS are also experiencing significant funding pressures.

16. One ATSILS has identified to the Law Council several challenges that it currently faces due to current funding levels, including:

    (a) high turnover of legal staff as ATSILS are unable to provide competitive salaries (discrepancy can be up to 40 per cent compared with staff of similar experience working for a LAC or as a prosecutor);

    (b) workloads that are well in excess of industry standards;

    (c) lack of investment in infrastructure in terms of buildings, capital equipment and support staff; and

    (d) inability to adequately provide services to many people in RRR areas.

17. The Law Council calls on the Australian Government to invest significant additional resources in legal assistance services and reverse the downward trend over the past 20 years in the Australian Government's funding on a real per capita basis.[10]

18. Additionally, the Law Council considers it particularly important in determining additional funding for the sector that resources are provided to meet unexpected increases in legal need as a result of new policy initiatives or legislation. These additional justice impacts on the system are often acutely experienced by individuals, legal assistance services, courts and tribunals, and are insufficiently factored into policy and law reform processes. The Law Council recommends Justice Impact Tests accompany new Government initiatives as a means of

[7] Law Council of Australia, *2022 Federal Election - Call to Parties: Improvements to laws and the administration of justice in a post-pandemic society* (April 2022) 4-5.
[8] Submission by National Legal Aid ('*NLA Submission*').
[9] Ibid.
[10] Advice from PwC to the Law Council of Australia, October 2021. Funding of LACs has failed to keep pace with population growth or inflation. The most recent analysis from PwC demonstrates that the Australian Government's per capita share of total government LAC funding in real terms is at its lowest level in more than 20 years, and that this share is declining.

determining the impact of any initiative or reform and ensuring that any increased legal need can be met.[11]

Recommendations:

- **The Australian Government should provide a significant and ongoing increase in the funding of the legal assistance sector of at least $300 million–$400 million per annum, including:**
  - **increased federal funding for Legal Aid Commissions across criminal, civil and family law matters, restoring the Commonwealth share of funding to 50 per cent; and**
  - **additional, ongoing and evidence-based resourcing for Community Legal Centres, Aboriginal and Torres Strait Islander Legal Services and Family Violence Prevention and Legal Services.**
- **The Australian Government should introduce Justice Impact Tests to facilitate the smoother development of laws and policies that have downstream impacts on the justice system and legal need.**

Family law system

19. Where parties cannot resolve matters themselves following relationship breakdown, the Australian family law system must deliver justice in the form of multiple avenues by which a timely, efficient and cost-effective resolution of disputes can occur, and which provide protection for the vulnerable and for victims of family violence. This includes a properly resourced and functioning court system.

20. The ALRC's Final Report on its *Inquiry into the Family Law System* identified several critical reforms to improve the family law system including continued funding to sustain judicial resourcing and increased funding for family law services provided by legal aid commissions and community legal centres.[12]

21. The Law Council recognises that the 2022–23 Budget included a number of important measures aimed at improving the family law system, including $87.9 million over four years to expand the FCFCOA's Lighthouse Project which triages matters involving serious family violence and $16.5 million for LACs to improve their capacity to support the implementation of, and transition to the new case management approach in the FCFCOA.[13] However, critical gaps remain.

22. As mentioned above, the Law Council has had the opportunity to review the submission by NLA to the Treasury as part of the Pre-Budget consultation process. The submission by NLA identifies the importance of legal aid assistance in family law matters and notes that demand for assistance continues to grow.[14] However, funding from the Australian Government does not reflect the importance of these services, nor has it grown sufficiently to keep up with demand.

[11] Law Council of Australia, *The Justice Project: Final Report – Governments and Policymakers* (August 2018) 14-26.
[12] Australian Law Reform Commission, *Family Law for the Future — An Inquiry into the Family Law System* (Report No 135, March 2019) <https://www.alrc.gov.au/inquiry/review-of-the-family-law-system/>.
[13] Hon Mark Dreyfus KC MP, Attorney General, 'Investing in Integrity, Human Rights and Safety' (Media Release, 25 October 2022).
[14] NLA Submission.

23. As identified by the NLA, funding is needed to ensure that it is a viable proposition for private practitioners to take on legal aid work in the family law space.[15] Due to funding constraints LACs have been unable to increase fees to keep pace with increasing costs in any meaningful way. As a result, NLA notes that there has been a significant decline in the number of private family law practitioners able to undertake legal aid work, including a 50 per cent reduction in Victoria over nine years and a 32 per cent reduction in Queensland since June 2021.[16] Private practitioners are an essential component of the legal assistance sector, particularly in family law, and failure to properly support this work puts at risk vital services for some of our most vulnerable people, including children.

24. NLA has suggested that an immediate injection of new funding is required. Its recommendations include $64.2 million per annum to expand the means test for approximately 7,500 more matters per year, with a focus on family law access for women and children escaping domestic and family violence and $27 million per annum to expand the independent children's lawyer program to provide best interests representation to 3,000 more matters per year or 65 per cent of children in contested parenting proceedings.[17]

25. On 30 January 2023, the Attorney-General's Department released an Exposure Draft of the Family Law Amendment Bill 2023 (**Draft Bill**) which seeks to address the ALRC's Report.[18] Several reforms proposed in the Draft Bill may have significant funding implications for legal assistance organisations. Examples include changes to the work of ICLs (usually funding through LACs) making clear certain obligations to meet with children and to engage their views, as well as the proposed introduction of 'harmful proceedings' orders, going beyond the current vexatious litigant process if the repeat applications might cause harm to the respondent. Therefore, it is vital that the implementation of these proposed reforms corresponds with a sustained increase in resourcing across the family law system to ensure that the funding pressures facing the legal assistance sector are not worsened. The potential impact of these reforms is, in the Law Council's view, an example of the necessity of Justice Impact Tests in identifying and addressing the complete cost and impact of Government measures.

Recommendation:

- **Alongside legislative reform proposals to improve the family law system, the Australian Government should provide additional funding:**
  - **for family law services provided by Legal Aid Commissions—including to increase the availability of legal aid grants and support specific programs such as Independent Children's Lawyers—and the legal assistance sector more broadly; and**
  - **to ensure that appropriate resourcing is provided to the Federal Circuit and Family Court of Australia to meet its substantial ongoing demands.**

[15] Ibid.
[16] Ibid.
[17] Ibid.
[18] Attorney-General's Department, *Exposure Draft - Family Law Amendment Bill 2023* (January 2023) <https://consultations.ag.gov.au/families-and-marriage/family-law-amendment-bill/>.

Rural, regional and remote communities

26. It is critically important that Australians living in RRR communities can access justice in the way that best suits their needs. Australians in RRR communities who face critical shortages in available services as well as financial, logistical and infrastructure barriers, are amongst those whose access to justice needs are most often overlooked.

27. The Law Council is advised that there is a shortage of private and public practitioners in RRR areas. Consequently, unmet legal need in RRR communities is significant. To address this, the Australian Government should allocate adequate, long-term funding for legal assistance services in these regions and investigate funding for the development of incentive programs that encourage solicitors to take up employment in RRR communities.

28. Technological issues such as poor internet and mobile coverage and lack of audio-visual and remote access technologies can create barriers to accessing justice in RRR areas, particularly in more remote areas. These barriers significantly impact individuals seeking information or advice, lawyers in obtaining information, mentoring and support, and courts and tribunals in conducting their essential services.[19]

Recommendations:

- **The Australian Government should allocate adequate, long-term funding for legal assistance services in rural regional and remote communities and investigate funding for the development of incentive programs that encourage solicitors to take up employment in these communities.**
- **Working with state and territory governments, the Australian Government should commission a full review of the resourcing needs of rural regional and remote communities in relation to interactions with the justice system), with a commitment to then addressing those needs.**

Federal Judicial Commission

29. In the 2022–23 Budget, the Australian Government committed to scoping merits and design of a Federal Judicial Commission.[20] The establishment of a Federal Judicial Commission was a key recommendation of ALRC in its 2021 Report *Without Fear or Favour: Judicial Impartiality and the Law on Bias*.[21]

[19] Karras et al, Law and Justice Foundation of New South Wales, *On the Edge of Justice: The Legal Needs of People with a Mental Illness in NSW* (2006) 104; Forell, Cain and Gray, *Recruitment and retention of lawyers*. The findings of this research paper, together with those of Cain, Macourt and Mulherin in *Lawyer availability and population change*, are summarised in Michael Cain, Deborah Macourt, Geoff Mulherin and Suzie Forell, Law and Justice Foundation of New South Wales, *Availability of lawyers in RRR locations: what we have learnt*, Updating Justice No 42 (2014) 123; Coverdale, 'Postcode Justice: Rural and Regional Disadvantage in the Administration of the Law' (2011) 16 *Deakin Law Review* 49.
[20] Hon Mark Dreyfus KC MP, Attorney General, 'Investing in Integrity, Human Rights and Safety' (Media Release, 25 October 2022).
[21] Australian Law Reform Commission, *Without Fear or Favour: Judicial Impartiality and the Law on Bias* (Final Report, December 2021) recommendation 5.

30. The Law Council strongly supports the establishment of a strong, independent, and transparent Judicial Commission to provide a clear and structured framework for responding to complaints directed to the federal judiciary and tribunal members and to support the provision of education, training and support, including pastoral care.

31. At the time of writing, the Attorney-General's Department has released a Discussion Paper entitled 'Scoping the establishment of a federal judicial commission'.[22]

32. In the Law Council's view, the Federal Judicial Commission should be established in the 2023–24 Financial Year. The Australian Government should therefore include funding to establish and adequately resource a federal judicial commission in the 2023–24 Budget.

Recommendation:

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

Funding of the Federal Courts

33. Australia's federal court system comprises the Federal Court of Australia (**FCA**), with broad original and appellate jurisdiction (particularly in relation to civil matters arising under Australian federal law), the FCFCOA (Division 1), a continuation of the previous Family Court of Australia with original and appellate jurisdiction in family law, and the FCFCOA (Division 2) with jurisdiction across family law and child support, migration law and a broad range of general federal law.

34. The federal courts have been the subject of extensive transformation in recent years. This has been driven primarily in response to the COVID-19 pandemic and by the merger of the previous Family Court of Australia and Federal Circuit Court of Australia into the FCFCOA. The Law Council notes that efficiency and administrative savings (including through the increased use of technology to undertake court and tribunal functions) are important components in increasing timeliness, efficiency and fairness. However, such measures are not alone sufficient to address the current backlogs and high workloads afflicting the federal courts and tribunals. The federal courts' ability to implement these measures depends on sustained resourcing for court staffing, facilities and IT infrastructure.

35. Sufficient and sustainable funding is necessary for courts and tribunals to efficiently process disputes and provide a fair outcome to participants. The capacity of the federal courts to resolve matters both swiftly and fairly is hampered by insufficient resourcing in the face of broadening demand for their services. In the Law Council's view, this must include funding to support the appointment of additional judges over and above current levels, providing adequate resources for registries (in particular noting the increased workload on the registries in the FCFCOA following the recent shifting of significant work to family law registrars), improving relevant technology and infrastructure, and improving services in RRR areas.

[22] Attorney-General's Department, Scoping the establishment of a federal judicial commission (Discussion Paper, January 2023) <https://consultations.ag.gov.au/legal-system/federal-judicial-commission/>.

Migration law caseload in the FCFCOA

36. The FCFCOA's Annual Report notes that the Court's 'pending migration caseload increased from approximately 12,000 applications in 2019–20 to 16,198 applications at the end of 2021–22'.[23] The Annual Report also emphasises that for 'the first time, as at 30 June 2022, the Court's pending migration caseload of 16,198 is larger than the Court's pending final order family law caseload of 15,607'.[24]

37. The Law Council is concerned by the growing backlog in the FCFCOA's migration jurisdiction. The clearance rate of migration cases in 2021–22 was 62 per cent meaning that 'the Court's pending migration caseload has continued to increase at a sustained rate'.[25] Additionally, reduced migration in recent years as a result of the COVID-19 pandemic appears to have slightly reduced the incoming caseload and therefore the backlog in cases. This is a trend which is unlikely to continue as we emerge from the pandemic.

38. The Hon Chief Justice William Alstergren, Chief Justice of the FCFCOA (Division 1) and Chief Judge of the FCFCOA (Division 2) has publicly acknowledged that this growing backlog cannot be addressed by 'efficiencies' alone and that it instead 'requires greater resources and perhaps legislative reform'.[26] This view is also acknowledged in the FCFCOA's Annual Report, which states that '[a]dditional resourcing is required to assist the Court to dispose of the pending caseload in a timely way'.[27]

39. On 16 December 2022, the Attorney-General, the Hon Mark Dreyfus KC MP, announced that the Australian Government will abolish the AAT and replace it with a new administrative review body.[28] As part of this process, the Government has committed to provide '$63.4 million over two years for an additional 75 members to address the current backlog of cases and reduce wait times while the new body is being set up'.[29] The Law Council welcomes this funding commitment to address the backlog in the AAT. However, the AAT does not exist in a vacuum and is a part of a larger system whereby decisions can be appealed to the federal courts. Without additional funding for the federal courts, and the FCFCOA in particular, it is likely that existing backlogs will be exacerbated.

40. Current statistics provided by the AAT indicate that as at 31 December 2022 there were more than 55,700 matters before the AAT's Migration and Refugee Division.[30] The appointment of 75 additional AAT members will significantly increase the number of finalisations over the remaining period of the AAT's operation. A substantial proportion of these additional finalisations will then be appealed to the

---

[23] Federal Circuit and Family Court of Australia, *Annual Reports 2021-22* (29 September 2022) 4, 104. See also Michael Pelly, 'Migration law system "unsustainable and unfair": top judge', *Australian Financial Review* (online, 28 November 2022) <https://www.afr.com/politics/federal/migration-law-system-unsustainable-and-unfair-top-judge-20221122-p5c0gv#:~:text=The%20current%20migration%20law%20system,says%20a%20senior%20federal%20judge>.
[24] Federal Circuit and Family Court of Australia, *Annual Reports 2021-22* (29 September 2022) 104.
[25] Ibid.
[26] Michael Pelly, 'Migration law system "unsustainable and unfair": top judge', *Australian Financial Review* (online, 28 November 2022) <https://www.afr.com/politics/federal/migration-law-system-unsustainable-and-unfair-top-judge-20221122-p5c0gv#:~:text=The%20current%20migration%20law%20system,says%20a%20senior%20federal%20judge>.
[27] Federal Circuit and Family Court of Australia, Annual Reports 2021-22 (29 September 2022) 104.
[28] Hon Mark Dreyfus KC MP, Attorney General, 'Albanese Government to abolish Administrative Appeals Tribunal' (Media Release, 16 December 2022).
[29] Ibid.
[30] Administrative Appeals Tribunal, *AAT Caseload Report: For the period 1 July 2022 to 31 December 2022* <https://www.aat.gov.au/AAT/media/AAT/Files/Statistics/AAT-Whole-of-Tribunal-Statistics-2022-23.pdf>.

FCFCOA. This influx of appeals will put significant further pressure on the Court's capacity to provide a just and fair system which deals with matters in a timely manner. The FCFCOA must receive additional resourcing to respond to this pressure.

41. It is important to note that measures to deal with the AAT's backlog before its dissolution are also likely to create increased need for legal assistance services which are already under-resourced to meet current demand for their services. Additional funding of legal assistance services must be considered as part of the measures to address the AAT backlog.

42. The potential impact of the decision in relation to the AAT backlog is a further example of the necessity of Justice Impact Tests in identifying and addressing the complete cost and impact of Government measures. The Law Council emphasises the recommendation earlier in this submission that the Australian Government should introduce Justice Impact Tests to facilitate the smoother development of laws and policies that have further impacts on the justice system.

Recommendations:

- **The Australian Government should increase the baseline resourcing of the federal courts including by:**
  - **appointing additional judges and tribunal members;**
  - **promptly filling vacancies;**
  - **providing increased resources for registries;**
  - **improving relevant technology and infrastructure; and**
  - **improving court services in rural, regional and remote areas.**
- **Accompanying measures already announced to support the Administrative Appeals Tribunal to address its existing backlog of matters, the Australian Government should provide additional funding to the federal courts, and the Federal Circuit and Family Court of Australia (Division 2) in particular, to address the increasing migration caseload backlog.**

Increasing the electoral participation of First Nations people prior to the referendum on the Voice to Parliament

43. The Law Council is concerned by low voter turnout of First Nations peoples in recent federal elections.[31] Engaging in First Nations electoral participation will be highly relevant to the referendum on a First Nations Voice to Parliament.

44. The particular relevance of the Voice referendum to First Nations peoples means that it is critical for government to focus its attention on how it can comprehensively engage with communities, in a culturally appropriate way, prior to the referendum vote. This includes efforts to raise the electoral participation of First Nations

[31] Felicity James, 'Low Indigenous voter turn-out at NT election threatening democracy, electoral commissioner says', Australian Broadcasting Corporation (online, 21 August 2020) <https://www.abc.net.au/news/2020-08-21/poor-indigenous-voter-turnout-at-nt-election/12580688>; see also Aaron Bunch, 'PM promises review of low NT voter turnout', Katherine Times, (online, 8 June 2022) <https://www.katherine times.com.au/story/7772899/pm-promises-review-of-low-nt-voter-turnout/>.

people,[32] as well as to ensure the timely availability of accurate, fair and impartial information—particularly in RRR areas—as part of the proposed neutral information campaign to be funded by the Government.[33]

45. The Law Council considers that any policy reforms or investment by the Government in this regard should be integrated into ongoing longer-term work, led by First Nations peoples, to inform First Nations communities about electoral processes, with the aim being to increase awareness and participation once enrolled.

Recommendation:

- **Ahead of the proposed referendum on a First Nations Voice to Parliament, the Government should consider additional measures, led by Aboriginal Community Controlled Organisations and other community organisations to support raising the electoral participation of First Nations People and ensure the timely availability of accurate, fair and impartial information.**

Elder law and elder abuse

46. There is a need to address the incidence of elder abuse in Australia, particularly financial elder abuse, but also physical, sexual and psychological abuse and neglect. The ALRC report *Elder Abuse—a National Legal Response* and the Final Report of the Royal Commission into Aged Care Quality and Safety recommend, and the National Plan to Respond to the Abuse of Older Australians 2019–2023 incorporates, a number of measures responding to this need.[34]

47. An important aspect in responding to these reports is the facilitation of greater consistency across state and territory enduring power of attorney laws. The Law Council is aware that proposals for law reform in this regard are currently being considered by the Standing Council of Attorneys-General, with public consultation on particular proposals to occur in 2023.[35] Reform to enduring power of attorney laws, accompanied by investment in a national education campaign to inform those making a power of attorney and those appointed of their responsibilities, and in government services and specialist legal assistance and aged care advocacy services to support the implementation of the reform, is essential to reducing financial elder abuse.

[32] The Law Council notes that in the 2022-23 Budget, the Government committed to provide $16.1 million over two years from 2022–23 to the Australian Electoral Commission (AEC) to increase First Nations enrolment and participation in future electoral events. The Law Council also notes that the increased electoral participation of First Nations people is an important component of the AEC's work to promote public awareness of election and ballot matters, in particular, through the Indigenous Electoral Participation Program.
[33] Commonwealth, *Parliamentary Debates*, House of Representatives, 1 December 2022, 4025-4026 (Patrick Gorman MP, Assistant Minister to the Prime Minister).
[34] Australian Law Reform Commission, *Elder Abuse—A National Legal Response* (Report No 131, June 2017) <https://www.alrc.gov.au/publication/elder-abuse-a-national-legal-response-alrc-report-131/>; Royal Commission into Aged Care Quality and Safety, *Care, Dignity and Respect* (Final Report, 1 March 2021) <https://agedcare.royalcommission.gov.au/publications/final-report>; Council of Attorneys-General, *National Plan to Respond to the Abuse of Older Australians (Elder Abuse) 2019-2023* (July 2019) <https://www.ag.gov.au/rights-and-protections/publications/national-plan-respond-abuse-older-australians-elder-abuse-2019-2023>.
[35] Standing Council of Attorneys-General, *Communique* (9 December 2022) 1.

48. Additionally, the Law Council remains concerned that funding of specialist legal assistance and aged care advocacy services is inadequate in light of the acute and widespread nature of elder abuse within the community. The Law Council is informed of a particular need to increase access to legal assistance services for persons in residential aged care. Legal assistance services provide specialist advice, representation and education for older persons and play a fundamental role in ensuring transparency and scrutiny of aged care.

49. The underfunding of legal assistance services means that, for example, in the 2020–21 financial year, just over one per cent of approved legal aid grants were provided to assist persons aged 65 years and over,[36] despite this group constituting 16 per cent of the population.[37] Funding for civil legal assistance is further limited with less than a quarter of the approved grants for this group being granted to civil law matters.[38]

50. Given that effective implementation of the National Plan requires a coordinated approach across all service providers, it is important that the upcoming Budget provide appropriate and sustained funding to ensure government agencies, tribunals and publicly funded services are properly resourced to implement the National Plan in a consistent manner.

51. Finally, the Law Council calls for the Australian Government to commit funding to conduct a long overdue review of the regulatory framework in relation to superannuation death benefit nominations.

52. Superannuation entitlements represent one of the largest assets owned by most Australians upon their retirement. However, where a superannuation fund member dies before receiving the entitlement, the law is not settled in regard to how superannuation death benefits should be disposed and there is significant complexity and ambiguity about the effect of such nominations in a range of different circumstances.

53. In 2017, the ALRC recommended a review be conducted by the Treasury into the structure and drafting of the provisions in the *Superannuation Industry (Supervision) Act 1993* (Cth) and *Superannuation Industry (Supervision) Regulations 1994* (Cth) to seek to address these complexities and ambiguities.[39] As noted by the ALRC, the ability to make a binding death benefit nomination is a key aspect of advance planning and clarity around the process for making these nominations will assist to provide autonomy to older persons and reduce the risk of elder abuse.

[36] National Legal Aid Statistics Report, 'Age' (for Financial Year 2020-2021) <https://nla.legalaid.nsw.gov.au/nlareports/Default.aspx>.
[37] Australian Bureau of Statistics, Australian Demographic Statistics (Catalogue No. 3101.0, June 2019).
[38] National Legal Aid Statistics Report, 'Age' (for Financial Year 2020-2021) <https://nla.legalaid.nsw.gov.au/nlareports/Default.aspx>.
[39] Australian Law Reform Commission, Elder Abuse—A National Legal Response (ALRC Report 131, June 2017) rec 7-1 <https://www.alrc.gov.au/wp-content/uploads/2019/08/elder_abuse_131_final_report_31_may_2017.pdf>.

Recommendations:

- **The Australian Government should provide appropriate, sustained and increased funding for specialist legal assistance and aged care advocacy services that work towards reducing elder abuse.**
- **In collaboration with the state and territories, the Australian Government should support the harmonisation of enduring powers of attorney laws.**
- **The Australian Government should fund a review of the regulatory framework in relation to superannuation death benefit nominations.**

Modern slavery and trafficked and exploited people

54. At the time of writing the statutory review of the *Modern Slavery Act 2018* (Cth) (**Modern Slavery Act**) is ongoing.

55. Eliminating slavery and slavery-like conditions is a global priority, and is reflected in Australia's commitments in a number of international instruments. The Modern Slavery Act was conceived as a scheme which, by requiring large corporate entities operating in Australia to publicly report on the measures to address the risk of modern slavery arising in their operations and supply chains, would generate a shared culture of transparency and accountability and inspire those entities to develop best practice.

56. The Law Council has been a strong supporter of the passage of the Modern Slavery Act and has been pleased to assist in its subsequent establishment. The Law Council recognises that the Modern Slavery Act has had a positive impact by increasing Australian entities' understanding of modern slavery and the need to improve their risk management practices.

57. However, the Law Council understands that some entities are having difficulty understanding how to assess the risks and how to respond to them, and not all entities are producing high-quality reports.

58. Notwithstanding the positive ground achieved, as detailed in its submission to the review of the Modern Slavery Act,[40] the Law Council suggests that reform is required to the Modern Slavery Act to address these shortcomings and mitigate, effectively, the risks of modern slavery consistent with Australia's international obligations. One of the most critical aspects of potential reform, in the context of the 2023–24 Budget, is the establishment of an Anti-Slavery Commissioner responsible for the performance of key regulatory measures—education, assessment and advice. An entity, resourced, equipped and accountable under the Modern Slavery Act, is needed to perform these additional functions.

59. The Law Council's Justice Project, which investigated barriers to accessing justice for a range of groups experiencing significant disadvantage in Australia, included a chapter on Trafficked and Exploited People (and other chapters of key relevance, such as on Recent Arrivals). It identified the formidable barriers experienced by

[40] Law Council of Australia, *Review of Australia's Modern Slavery Act 2018*, submission to the Attorney-General's Department (13 December 2022) <https://www.lawcouncil.asn.au/resources/submissions/review-of-the-commonwealth-modern-slavery-act-2018> ('Modern Slavery Act Review submission').

many trafficked and exploited people within Australia in accessing justice effectively.[41]

60. The legal position of people who are trafficked or exploited is frequently highly complex, requiring consideration of their situation under immigration, family, employment and criminal laws. Victims depend on such advice to make informed and empowered choices about their futures. This reinforces the need for publicly funded, culturally competent and specialised legal assistance services.

61. Further, the Law Council has a long-standing position that a federal compensation scheme for victims of modern slavery instituted under Commonwealth law should be established, consistent with Australia's international obligations.[42] While statutory victims' compensation schemes are provided by each of the eight States and Territories, to which trafficked people may, in limited circumstances, have access, these schemes are not designed to provide a remedy to victims of Federal offences against the person. The Law Council conveyed this position in its submission to the statutory review of the Modern Slavery Act, which is due to report by the end of March 2023.

62. The Law Council notes that the National Action Plan to Combat Modern Slavery 2020–25 commits to a targeted review of support and legislative protections, defences and remedies available to modern slavery victims and survivors, particularly women and children. However, it is not clear whether that targeted review will involve consideration of a federal compensation scheme.[43]

63. If the statutory review does not make recommendations in relation to the establishment of such a scheme and the scheme is not otherwise intended to be addressed in the targeted review, the Law Council suggests that the Australian Government at least commit to a study or inquiry into the establishment of such a scheme over the next financial year.

64. Beyond the issue of modern slavery, the Law Council reiterates its position that the Australian Government should develop a National Action Plan on Business and Human Rights to provide a coordinated and concrete plan to help business enterprises respect all relevant human rights meaningfully in conformity with the Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework' (**UNGPs**).[44]

[41] Law Council of Australia, *The Justice Project: Final Report – People who have been Trafficked and Exploited* (August 2018) 13-21 < https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Final%20Report/10%20-%202018%2009%20-%20People%20who%20have%20been%20Trafficked%20and%20Exploited%20%28Part%201%29.pdf>.
[42] Law Council of Australia, Modern Slavery Act Review submission, [227]-[245].
[43] Australian Government, *National Action Plan to Combat Modern Slavery 2020-25* (December 2020) 27.
[44] Law Council of Australia, Modern Slavery Act Review submission, [31]-[37], [79].

Recommendations:

- **The *Modern Slavery Act 2018* (Cth) should be amended to provide for an Anti-Slavery Commissioner, as an independent Commonwealth office-holder, responsible for the performance of key regulatory measures—education, assessment and advice. The Commissioner should be supported by appropriate funding to perform these functions.**
- **The Australian Government should commit additional funding, matched by state and territory government contributions, to ensure that people who are trafficked and exploited can access specialised legal assistance services and qualified interpreters, including in regional, rural and remote areas.**
- **Subject to the outcome of the statutory review of the Modern Slavery Act, the Australian Government should at least commit funding to a study or inquiry into the establishment of a federal compensation scheme for victims of modern slavery.**
- **The Australian Government should commit funding to the development of a National Action Plan on Business and Human Rights to provide a coordinated means to give effect to its commitment to the Guiding Principles on Business and Human Rights**.

Migration reform

65. Consistent with its long-standing position, the Law Council calls on the Australian Government to give effect to its costed,[45] pre-election commitment to undertake the reforms necessary to abolish temporary protection visas and safe haven enterprise visas and provide holders of such visas with permanent visas. This reform will improve settlement outcomes for affected refugees, given the deleterious impact on mental health and general well-being which has been found to result from the scheme of temporary protection, and provide them with a pathway to citizenship, thus enabling them to better participate in Australian society.

66. The Law Council suggests funding also be allocated to the Australian Government's ongoing reforms to the migration system, particularly the Skilled Migration Program, addressing any relevant recommendations of the *A Migration System for Australia's Future* review and specific areas for further work identified in the Outcomes document produced following the Jobs and Skills Summit.[46]

Recommendation

- **The Australian Government should commit funds to give effect to its commitment to abolish temporary protection visas and safe haven enterprise visas.**
- **The Australian Government should commit funds to further its reform agenda to the migration system generally, particularly the Skilled Migration Program.**

[45] Parliamentary Budget Office, 'Abolish TPVs and SHEVS and create a new permanent visa - 2022 Election commitments report: ECR104' (Australian Labor Party).
[46] Australian Government, *Jobs + Skills Summit – Outcomes 1-2 September* (September 2022) 4 <https://treasury.gov.au/sites/default/files/inline-files/Jobs-and-Skills-Summit-Outcomes-Document.pdf>.

Optional Protocol to the Convention Against Torture

67. As a signatory to the OPCAT,[47] Australia is required to:

    (a) establish national preventive mechanisms (**NPMs**) for the prevention of torture, which examine the treatment of persons deprived of their liberty in places of detention and make recommendations to the relevant authorities with the aim of improving the treatment and conditions of such persons;[48] and

    (b) make available the necessary resources for the functioning of NPMs.[49]

68. NPMs must be established in all domestic jurisdictions (the Commonwealth and states and territories). However, not all states and territories established NPMs by the extended deadline for doing so, of 20 January 2023.

69. The Law Council remains concerned that national momentum regarding OPCAT has stalled since ratification, and that across multiple jurisdictions, core gaps remain in the primary legislation, resourcing and coordinating frameworks which are required.

70. The suspension of the United Nations Subcommittee on Prevention of Torture visit to Australia in October 2022 in light of the difficulties it encountered in carrying out its mandate to inspect any and all places of detention, is further evidence of this.

71. There is a need for urgent national dialogue between the federal, state and territory governments to address the establishment of NPMs and measures to ensure full compliance with Australia's obligations under OPCAT going forward.

72. The Law Council was encouraged that participants of the Standing Council of Attorneys-General meeting on 9 December 2022 agreed to provide costings to the Commonwealth about anticipated funding required to set up a fully operational NPM and committed to further discuss the work necessary to achieve full implementation of OPCAT. The forthcoming Budget provides an opportunity for the Commonwealth to make a financial contribution to expeditious implementation of all of Australia's obligations under OPCAT.

Recommendation:

- **The Australian Government should contribute an appropriate share of funding to ensure the establishment of National Preventive Mechanisms in all domestic jurisdictions and full implementation of the Optional Protocol to the Convention Against Torture in general.**

Agency Resourcing

Office of the Australian Information Commissioner

73. The high-profile data breaches affecting Optus and Medibank in 2022 exemplify the need to prioritise privacy and data security in formulating the Government's budgetary and strategic planning. In response to these data breaches, the Government recently enacted the *Privacy Legislation Amendment (Enforcement and*

[47] UN General Assembly, *Optional Protocol to the Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment*, 9 January 2003, A/RES/57/199.
[48] Ibid articles 17 and 19.
[49] Ibid article 18(2).

Other Measures) Act 2022 (Cth) (**the Amendment**), which, inter alia, grants the OAIC enhanced enforcement and information sharing powers in order to conduct comprehensive and expeditious investigations relating to eligible data breaches.

74. In the Law Council's view, the OAIC's ability to perform its enhanced functions under the Amendment is contingent upon a significant increase in funding and resourcing.

Recommendation

- **The Australian Government should substantially increase the funding of the Office of the Australian Information Commissioner to ensure that is can perform its enhanced functions under the *Privacy Legislation Amendment (Enforcement and Other Measures) Act 2022* (Cth).**

Australian Human Rights Commission

75. The Law Council notes that additional funding was provided to the AHRC in the 2022–23 Budget to somewhat address its long-term underfunding in light of its varied and increasing program of work.[50] However, the Law Council considers that careful scrutiny is needed as to whether the AHRC's increased base funding is now clearly sufficient to ensure that it can carry out its core functions effectively, in light of its recent staffing cuts. In 2022, the Global Alliance of National Human Rights Institutions also emphasised that sustainable, ongoing base funding is vital to assure the Commission's ongoing independence and the fulfilment of its mandate.[51]

Recommendation:

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

Developing and strengthening the legal profession in the South Pacific region

Pacific Islands Legal Information Institute

76. PacLII is the principal source of legal information for 20 Pacific Island jurisdictions and is relied upon by the legal profession, judiciary, researchers and the broader community across the Pacific—including Australia and New Zealand. PacLII is administered by the University of the South Pacific, with extensive technical assistance from the Australasian Legal Information Institute (**AustLII**).

77. The Law Council notes the commitment of the Australian Government to promoting the rule of law and access to legal services in the Pacific, and in particular, its recognition of the importance of open and free legal information provided by PacLII.

[50] Hon Mark Dreyfus KC MP, Attorney General, 'Investing in Integrity, Human Rights and Safety' (Media Release, 25 October 2022).
[51] Global Alliance of National Human Rights Institutions, *Statement on international accreditation of the Australian Human Rights Commission* (7 April 2022) 4 <https://humanrights.gov.au/sites/default/files/nhri_australia_no_cover_4.pdf >.

78. The Australian Government previously provided financial support to PacLII, however its most recent funding arrangement concluded in 2018. Between 2018 and 2022, funding for PacLII was principally provided by the Supreme and National Courts of Papua New Guinea.

79. In 2022, the Supreme and National Courts of Papua New Guinea withdrew funding for PacLII, and as a result, PacLII's financial situation is currently critical. The Law Council is deeply concerned that without urgent funding, there is a serious risk that this longstanding and crucial service will be unable to continue operating.

80. The Law Council notes that AustLII and PacLII have developed a detailed funding proposal regarding adequate funding to secure PacLII's operation for the next five years. AustLII submitted this funding proposal to the Minister of Foreign Affairs and Attorney-General, and their respective Departments, in October 2022.

81. In correspondence with the Minister of Foreign Affairs, and in subsequent meetings and correspondence with the Department of Foreign Affairs and Trade, the Law Council has expressed support for this funding proposal, and strongly encouraged the Australian Government to provide adequate funding to enable PacLII's ongoing operation.

82. The Law Council views PacLII as an essential piece of legal infrastructure which underpins the political, economic and social development of individual Pacific countries and the region as a whole. Due to the limited capacity of many Pacific jurisdictions to provide accessible and consolidated case law and legislation, as well as the prohibitive costs for legal practitioners to purchase legal materials from commercial providers in the region, the Law Council understands that PacLII is currently the only viable and credible model for the provision of access to primary and secondary legal materials within the Pacific.

83. Independent legal associations across the Pacific—in Tuvalu, American Samoa, the Cook Islands, Fiji, the Marshall Islands, New Zealand, Samoa, the Solomon Islands, Tonga, and Vanuatu—have also emphasised the fundamental contribution that PacLII provides to promote and support access to justice and the rule of law in the Pacific, and unanimously endorsed calls for the Australian Government to provide essential funding to PacLII.[52]

84. Financial support to secure PacLII's ongoing operation would provide an invaluable opportunity for the Australian Government to promote transparency, good governance, and the rule of law within the Pacific region, and facilitate access to justice and the delivery of legal services in Pacific jurisdictions.

Recommendation

- **The Australian Government should provide adequate funding to enable the continued operation of the Pacific Islands Legal Information Institute (PacLII).**

[52] Letter from South Pacific Lawyers' Association, Dr Gordon Hughes AM, Chair, South Pacific Lawyers' Association to Senator the Hon Penny Wong, Minister for Foreign Affairs, and the Hon Pat Conroy MP, Minister for International Development and the Pacific, 5 December 2022 <https://www.southpacificlawyers.org/_files/ugd/31792c_753c92097ecc494699b43493c8aaf476.pdf>

Support for Independent Legal Professional Bodies in the Pacific

85. Civil society organisations, including professional lawyers' associations, are crucial to negotiating and shaping institutions in developing jurisdictions, and contribute to the ongoing processes of stable politics by representing interests, participating in consultative policy processes and promoting the flow of information between government and the public.[53]

86. Self-governing and independent legal professional associations are fundamental to the rule of law and the protection of human rights. They promote and defend the proper separation of powers (in particular, a strong and independent judiciary), monitor legislation and the exercise of executive power, and promote the development of effective, accountable and transparent institutions. They also cooperate with governments to promote effective and equal access to justice. These activities promote economic and social stability, good governance and an effective justice system. In turn, economic and social stability and an effective justice system have the capacity to reduce the risk of military coups, undemocratic government and susceptibility to foreign influence, all of which remain significant potential issues across the region.

87. In 2006, the Law Council initiated the establishment of the SPLA, a regional organisation comprised of legal professional associations and lawyers' groups representing seventeen jurisdictions across the South Pacific.[54] SPLA works to support, develop and strengthen law societies and bar associations in South Pacific jurisdictions, and provide South Pacific lawyers with continuing professional development (**CPD**) opportunities. The Law Council continues to serve as the SPLA Secretariat.

88. The Law Council has previously encouraged the Australian Government, in its new International Development Policy, to expand its partnerships with independent legal professional associations in the South Pacific region, and support their activities to improve access to justice, the delivery of quality legal services, good governance, and the development of effective, accountable and transparent justice institutions.[55] The Law Council remains willing to assist the Australian Government's Overseas Development Assistance Program as it relates to law and justice.

89. The Law Council also encourages the Australian Government to allocate funding to support SPLA's existing initiatives to provide CPD opportunities for South Pacific lawyers, in particular Alternative Dispute Resolution training and CPD which aims to improve access to justice in Pacific jurisdictions and relieve extensive case backlogs in under-resourced courts.

---

[53] Adrian Leftwich, 'The political approach to law and justice sector', (Think piece prepared for the Office of Development Effectiveness, AusAID, 2022) 13-14 <https://www.dfat.gov.au/sites/default/files/leftwich-thinkpiece.pdf>. See also, Office of Development Effectiveness, *Building on Local Strengths: Evaluation of Australian Law and Justice Assistance* (December 2012.

[54] American Samoa, Australia, Cook Islands, Fiji, Kiribati, Marshall Islands, Nauru, New Zealand, Niue, Norfolk Island, Papua New Guinea, Samoa, Solomon Islands, Timor Leste, Tonga, Tuvalu and Vanuatu.

[55] Law Council of Australia, 'Submission in relation to Australia's New International Development Policy' (30 November 2022) <https://www.dfat.gov.au/sites/default/files/new-international-development-policy-submission-law-council-australia.pdf>.

Recommendation

- **The Australian Government should provide funding to strengthen and support the activities and development of legal professional associations in the South Pacific, including by working in collaboration with existing initiatives of the Law Council and the South Pacific Lawyers' Association.**
- **The Australian Government should provide funding for specialised training for legal practitioners in the South Pacific region to be delivered through the South Pacific Lawyers' Association.**