



Law Council
OF AUSTRALIA

2018-19 Pre-Budget Submission

The Treasury

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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.

Acknowledgement

The Law Council is grateful for the assistance of its Access to Justice Committee and the Law Society of New South Wales for assistance in preparing this submission.

Introduction

1. The Law Council is grateful for the opportunity to provide this submission to Treasury for consideration in drafting the 2018-19 Federal Budget.
2. The Law Council's submission focuses on two key issues:
 - (a) Commonwealth Government funding for legal assistance services; and
 - (b) Commonwealth Government funding for federal courts and tribunals.

Funding for legal assistance services

3. In the 2017-18 Federal Budget, the Government reversed a proposed 30 per cent cut (\$35 million) to legal assistance sector funding that would have devastated community legal centres (**CLCs**) and Aboriginal and Torres Strait Islander Legal Services (**ATSILS**).
4. The Law Council is grateful that the Government reversed these cuts which would have seen thousands of additional Australians denied legal assistance. However, this funding merely continued existing funding levels and did not address the growing funding crisis in the legal assistance sector.
5. The Law Council is currently undertaking a comprehensive national review into the state of access to justice in Australia, [The Justice Project](#). The Justice Project is focused on analysing the access to justice barriers facing 13 groups identified as acutely disadvantaged, either socially or economically. As part of this project the Law Council released extensive consultation papers for each group on which 128 submissions were received. Additionally, the Law Council conducted more than 130 consultations with stakeholders.
6. A prominent theme identified throughout the Justice Project process is that the cost of legal assistance is a frequent and formidable barrier for people with complex and intersectional disadvantage. Government-funded free legal assistance services are often the only option for vulnerable people experiencing legal problems. Yet, federal funding for legal aid has declined to such an extent that despite the fact that more than 13 per cent of Australians live below the poverty line,¹ just eight per cent of all Australian households now qualify for legal aid.²
7. The legal assistance sector funding, particularly for civil and administrative cases is fundamental to ameliorating the factors that increase the risks of marginalised living and poverty (unemployment, debt, housing, etc).³ Often, all that is required to prevent relatively minor problems expanding into more serious matters requiring regulatory response, law enforcement and/or court intervention is early legal advice and assistance of the kind provided by legal aid commissions (**LACs**), CLCs, ATSILS, and Family Violence Prevention Legal Services (**FVPLS**).

¹ Australian Council of Social Service, *Poverty in Australia 2016*, 7 <<http://www.acoss.org.au/wp-content/uploads/2016/10/Poverty-in-Australia-2016.pdf>>.

² Productivity Commission, *Access to Justice Arrangements*, December 2014, 1016.

³ See, eg, Andrea Durbach, 'Between the Idea and the Reality: Securing Access to Justice in an Environment of Declining Points of Entry', in Andrea Durbach, Brendan Edgeworth and Vicki Sentas (eds), *Law and Poverty in Australia: 40 Years after the Poverty Commission* (Federation Press, 2017), 214-215, 230.

8. The cost of this kind of early intervention is a fraction of the down-stream savings possible by reducing the reliance on other government services that results from unresolved legal issues. The Productivity Commission in its 2014 Report into *Access to Justice Arrangements*, recognised the important community benefits of providing legal assistance to people with civil legal problem. The Productivity Commission emphasised that not providing legal assistance for civil matters ‘can be a false economy as the costs of unresolved problems are often shifted to other areas of government spending such as health care, housing and child protection’.⁴
9. In the *Access to Justice Arrangements* Report the Productivity Commission recommended that Australian, State and Territory Governments should provide additional funding for civil legal assistance services of approximately \$200 million to address the more pressing gaps in civil legal assistance services.⁵ The Federal Government has thus far failed to respond to this urgent recommendation.
10. The Productivity Commission further noted that:

Given the dearth of data, and having regard to the pressing nature of service gaps, the Commission considers that an interim funding injection in the order of \$200 million — from the Australian, state and territory governments — is required per year. The Commonwealth’s contribution would be in the order of 60 per cent. This funding injection would enable legal assistance services providers to address the most pressing needs, including to:

- *maintain existing frontline services of the LACs, CLCs and ATSILS that have a demonstrated benefit to the community and that have been affected by the recent funding decisions described above*
- *relax the means test applied by the LACs and so allow more households to be eligible to receive grants of legal aid*
- *provide grants of legal aid in areas of law where there is little assistance being currently provided, either by LACs or other legal assistance services.*⁶

11. The Productivity Commission’s Inquiry did not consider unmet legal need in the criminal law area. While Commonwealth funding is not allocated to matters arising under State and Territory criminal statutes, there has been a significant increase in demand for legal assistance arising from Federal prosecutions in respect of terrorism-related offences, drug law enforcement and Centrelink fraud. This has largely arisen from increased federal enforcement activities, without any compensating increase in federal funding for legal assistance services. The Productivity Commission recognised that failure to adequately fund the defence in criminal trials seriously impacts on the pool available for civil matters, given the rule of law and criminal justice principles require that people facing indictment and likelihood of imprisonment have legal representation.

Recommendation:

That the Federal Government immediately increase funding for civil legal assistance by \$120 million per annum (with the States and Territories contributing an additional \$80 million per annum, comprising a total of \$200 million per annum), as recommended by the Productivity Commission in its 2014 Report on *Access to Justice Arrangements*.

4 Productivity Commission, *Access to Justice Arrangements*, December 2014, 30-31.

5 Ibid rec 21.4.

6 Ibid 738-739.

Legal Aid Commissions

12. The Commonwealth's contribution to funding of LACs has reduced dramatically since 1997, from around \$ 11.55 per capita in 1996-97 to around \$8.74 per capita in 2016-17 (in real terms, adjusted for inflation and population increases).⁷
13. Prior to 1996-97, the Federal Government's funding contributions to LACs accounted for 55 per cent of total funding, with the remaining 45 per cent covered by State grants and interest from public purpose funds. In 2016-17, Federal Government grants make up approximately 32 per cent of LAC funding.⁸
14. Although Federal Government grants are due to rise very slightly from \$215 million in the 2016-17 financial year to \$219.9 million in 2019-20 (see Table 1), analysis prepared by PricewaterhouseCoopers (**PwC**) for the Law Council demonstrates that, holding State sources constant from their 2016-17 budgeted level and allowing for inflation and population growth, real per capita legal aid funding is set to decline due to falling Commonwealth contributions in real terms (see Figure 1).⁹
15. This funding decline will have serious consequences for the already over-burdened and under-resourced LACs. In particular, this decline will further reduce the ability of Australians to access legal assistance when required and continue the growth of the "missing-middle" cohort, who do not qualify for legal aid but cannot afford private legal assistance.
16. Continued funding reductions to access legal aid will not just affect those seeking legal assistance, it will have significant downstream effects on the functioning and cost of the justice system as a whole and the corresponding demand for and cost of government services in a range of other essential areas, including health, social security and other community services.
17. Underfunding of LACs has a direct impact on other government services. Unresolved legal problems (particularly unresolved civil legal problems such as employment issues or fine debt) strongly impacts on many people's reliance on government services, including through increased reliance on health and community services, increased unemployment, reduced productivity, social isolation, homelessness and problems associated with child welfare, increased criminal activity and higher rates of imprisonment.¹⁰
18. Underfunding of LACs also increases the frequency of unrepresented parties before the courts, resulting in significant delays and substantial economic costs in terms of reduced efficiency of the federal justice system.
19. Actuarial analysis previously prepared by PwC for National Legal Aid demonstrates that investment in legal aid can yield significant downstream savings in terms of the cost and efficiency of delivering justice (between \$1.60 and \$2.25 for each dollar spent on legal aid).¹¹

7 Statistics drawn from advice provided to the Law Council by PwC, January 2018.

8 Ibid.

9 Ibid.

10 Productivity Commission, *Access to Justice Arrangements*, December 2014, Appendix K.

11 PricewaterhouseCoopers, *Legal Aid Funding: Current Challenges and the Opportunities for Cooperative Federalism* (2009). Report prepared for National Legal Aid.

20. In order to prevent the further deterioration of Australia’s legal system due to under-funding of legal aid and in order to achieve the efficiency savings possible through properly-funded legal aid, the Law Council recommends that the government match the contributions of the States and Territories and return legal aid funding to a 50-50 share. This would require additional \$189.9 million in the 2018-19 Federal Budget and \$203.0 million in 2019-20 (see Table 1).

Recommendation:

Return the Commonwealth’s share of legal aid commission funding to an equal share with the States and Territories through an additional \$189.9 million in the 2018-19 Budget.

Table 1 - Level of nominal Commonwealth funding required for 50% share of total funding¹²

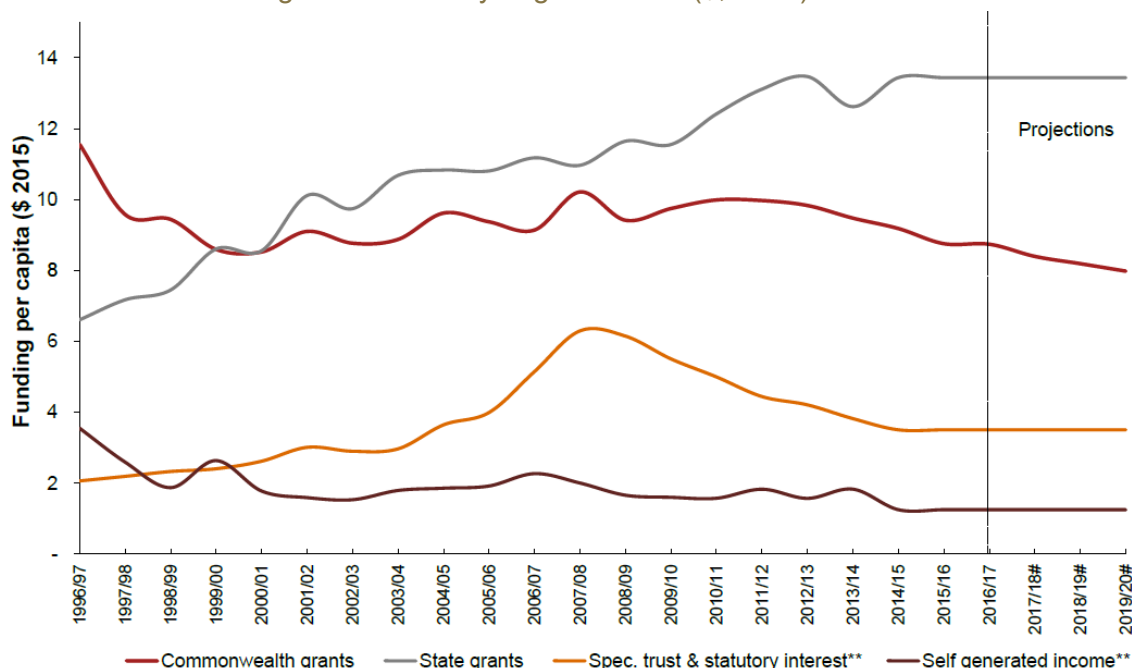
Financial Year	Cth Input Grants*	State Input Grants	Level of additional funding required
2016-17	\$215 million	\$377.9 million	\$162.9 million
2017-18	\$214.2 million	\$391.8 million	\$177.6 million
2018-19	\$217.2 million	\$407.2 million	\$189.9 million
2019-20	\$219.9 million	\$422.9 million	\$203.0 million
Total			\$733.4 million

Source: NLA statistics, ABS catalogues 6401.0, 3101.0 and cat 3202.0, RBA Statement on Monetary Policy November 2017, 2017-18 Federal Budget, 2015 National Partnership Agreement on Legal Assistance Services, and the 2017-18 Attorney General’s Department Portfolio Budget Statement

Note: *Includes NPA and non-NPA input grants. Numbers may not add due to rounding

¹² Table 1 is taken from advice provided to the Law Council by PwC, January 2018.

Figure 1 – Real funding of legal aid commissions per capita by source (excluding Commonwealth funding for Community Legal Centres (\$, 2017)¹³



Source: NLA statistics, ABS catalogues 6401.0, 3101.0 and cat 3202.0, RBA Statement on Monetary Policy May 2016, 2016-17 Federal Budget, National Partnership Agreement on Legal Assistance Services, and 2016-17 Attorney General's Department Portfolio Budget Statement

1. 2016-17 budgeted estimates are sourced from National Legal Aid statistics.
 2. 2017-18 to 2019-20 estimates of Commonwealth funding is sourced from the National Partnership Agreement on Legal Assistance Services (consistent with the 2016-17 Federal Budget) and the 2017-18 Attorney General's Department Portfolio Budget Statement
 3. Commonwealth input grants includes NPA grants and funding for the Expensive Commonwealth Criminal Cases Fund
- ** These are considered state sources of funding

Aboriginal and Torres Strait Islander Legal Services

21. The number of Aboriginal and Torres Islander persons in prison in Australia is a well-recognised problem.¹⁴

22. In the 2017 Prisoner census, the Australian Bureau of Statistics (**ABS**) found that of the 41,202 people in prison in Australia (on 30 June 2017), 11,307 were Aboriginal or Torres Strait Islander (27.44 per cent).¹⁵ However, according the 2016 Census, Aboriginal and Torres Strait Islander people represent only 2.8 per cent per cent of Australia's

13 Figure 1 is taken from advice provided to the Law Council by PwC, January 2018.

14 See, eg, Change the Record, *The Issue* <<https://changetherecord.org.au/get-the-facts>>; Human Rights Law Centre and Change the Record, *Over-represented and overlooked: the crisis of Aboriginal and Torres Strait Islander women's growing over-imprisonment* (May 2017); Senator The Hon George Brandis QC, Attorney General and Senator The Hon Nigel Scullion, Minister for Indigenous Affairs, 'ALRC inquiry into incarceration rate of Indigenous Australians' (Media Release, 27 October 2016) <<https://www.attorneygeneral.gov.au/Mediareleases/Pages/2016/FourthQuarter/ALRC-inquiry-into-incarceration-rate-of-indigenous-australians.aspx>>; Victoria Tauli-Corpuz, United Nations Special Rapporteur on the rights of indigenous people, 'Australia's Aboriginal peoples face "tsunami" of imprisonment, UN expert finds' (Media Release, 4 April 2017) <<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21475&LangID=E#sthash.Bgrwjzi2.dpuf>>.

15 Australian Bureau of Statistics, *Prisoners in Australia*, cat no 4517.0, 2017, <<http://www.abs.gov.au/ausstats/abs@.nsf/mf/4517.0>>.

population.¹⁶ From 2007 to 2017 the number of Aboriginal and Torres Strait Islander people in prison has increased by 70 per cent per cent from 6,632 to 11,307.¹⁷

23. Statistics are even worse for Aboriginal and Torres Strait Islander women, with the proportion of female prisoners who are Aboriginal and Torres Strait Islander people having doubled in the 30 years since the Royal Commission into Aboriginal Deaths in Custody (from 17 per cent in 1987 to 34 per in 2017).¹⁸
24. The impact of being in prison can be severe, with much higher rates of deaths in custody for Indigenous peoples¹⁹ and the impacts of imprisonment generally affecting not only individuals but also their families and communities.²⁰ Moreover, the financial cost of high imprisonment rates would be better spent supporting healthy and productive communities.
25. It is clear that the legal needs of Aboriginal and Torres Strait Islander peoples are not able to be met under existing resource constraints. The consequences of this inadequate Commonwealth funding are that:
 - (a) Aboriginal and Torres Strait Islander people experience extremely high levels of unmet legal need, contributing substantially to the overrepresentation of Indigenous men, women and children in prison and youth justice systems;
 - (b) Aboriginal and Torres Strait Islander victims of violence are often unrepresented, or unable to obtain adequate representation, which increases their likelihood of further victimisation, homelessness and sustained disadvantage; and
 - (c) the justice system continues to be ineffective in arresting high rates of crime, imprisonment and recidivism, perpetuating policy failures at all levels with respect to the Federal Government's 'Closing the Gap' initiatives, undermining in particular, education attainment, employment targets and health outcomes.
26. As a result of significant under-funding, organisations primarily tasked with providing legal assistance to Aboriginal and Torres Strait Islander people in need, ATSILS and FVPLS, face enormous challenges in service provision. These challenges include often being:
 - (a) forced to offer substantially lower salaries compared to other legal assistance providers (for example, LACs) to lawyers who generally experience difficult working conditions and very high caseloads; and
 - (b) obliged to make staff members redundant, freeze wages, close offices and place refuse new clients, reduce front line service delivery, and reduce critical afterhours help to those with emergencies.

16 Australian Bureau of Statistics, *Census of Population and Housing: Australia Revealed, 2016*, cat no 2024.0, 2017, <<http://www.abs.gov.au/ausstats/abs@.nsf/mf/2024.0>>.

17 Australian Bureau of Statistics, *Prisoners in Australia*, cat no 4517.0, 2017, <<http://www.abs.gov.au/ausstats/abs@.nsf/mf/4517.0>>.

18 Ibid. See also, Human Rights Law Centre and Change the Record, *Over-represented and overlooked: the crisis of Aboriginal and Torres Strait Islander women's growing over-imprisonment* (May 2017).

19 Productivity Commission, *Overcoming Indigenous Disadvantage 2016*, ch 4 s 4.13 box 4.13.1 <<http://www.pc.gov.au/research/ongoing/overcoming-indigenous-disadvantage/2016/report-documents/oid-2016-chapter4-coag-targets-and-headline-indicators.pdf>>.

20 Ibid.

27. The Law Council recommends that as a matter of urgency, the Government engage with ATSILS to develop a sustainable funding model going forward.
28. On 27 October 2016, the Government's tasked the Australian Law Reform Commission (**ALRC**) to examine the factors leading to the over-representation of Aboriginal and Torres Strait Islander peoples in our prisons and consider law reform to ameliorate this crisis. The ALRC's report was delivered to the Attorney-General in December 2017 and has yet to be publicly released. It is critical that the report be publicly released as soon as possible and that its recommendations be considered in the context of the 2018-19 Federal Budget.

Recommendations:

The Federal Government should engage with Aboriginal and Torres Strait Islander Legal Services to develop a sustainable funding model going forward, as a matter of urgency.

Community Legal Centres

29. Community legal centres provide direct assistance to over 200,000 clients each year. CLCs are efficient and innovative providers of free legal assistance to vulnerable and disadvantaged members of the community and the work of CLCs generates savings to governments and the community as a whole. CLCs are also able to draw upon significant pro bono and volunteer contributions.
30. However, in 2015, NACLCL ran a census of its member organisations, revealing that over 150,000 people were turned away in that year because the CLCs did not have the capacity to deal with demand.²¹
31. The Law Council is grateful for the recent continuation of funding for CLCs as well as other initiatives such as \$30 million in family violence funding over three years for front-line legal assistance and family law services announced in October 2016.²²
32. However, as with ATSILS and LACs, government funding for CLCs has not kept pace with increasing levels of legal need, nor the cost of services. Funding for the family violence work of CLCs is insufficient to meet rising demand for assistance and the additional funding provided to a small number of CLCs under the Women's Safety Package²³ does not address the broader funding issues faced by other CLCs.
33. Throughout *The Justice Project* process, the Law Council has heard from CLCs that it is vital that when funding is provided, it is stable and long-term. Stable funding allows CLCs to build trust and develop relationships in local communities which can encourage people to seek solutions to legal problems that may have otherwise remained unresolved. Stable funding also enables CLCs to obtain efficiency savings through continuity of staff and by reducing the resources spent on obtaining funding. These efficiency savings can then be redirected into providing services.

21 Jenna Price, 'The ministers leading the war on the poor', *Sydney Morning Herald* (online), 17 January 2017 <<http://www.smh.com.au/comment/the-ministers-leading-the-war-on-the-poor-20170116-gts9xa.html>>.

22 James Massola, 'Coalition to unveil details of \$100m domestic violence package', *Sydney Morning Herald* (online), 28 October 2017 <<http://www.smh.com.au/federal-politics/political-news/coalition-to-unveil-details-of-100m-domestic-violence-package-20161027-gsc59f.html>>.

23 Ibid.

34. The Law Council notes that the Attorney-General's Department will soon commence consultation around the development of a new National Partnership Agreement. The Law Council encourages the Government to engage with CLC peak organisations to determine an appropriate funding model to enable CLCs to meet clearly high levels of unmet legal need.

Federal courts and tribunals

Family courts

35. The family courts comprise the Family Court of Australia and the family law jurisdiction of the Federal Circuit Court, which undertakes the majority (87%) of the family law workload of the federal courts.²⁴ There is a separate Family Court of Western Australia and appeals from that court lie to the Full Court of the Family Court of Australia. It has been an established position of the Law Council over a long period of time that Australia's family law system and in particular, the family courts have been inadequately resourced.
36. The Law Council recognises the Government's consideration of the family law system in the 2017-18 Budget, particularly, through the provision of \$10.7m for family consultants and the commencement of a review of the family law system by the ALRC.
37. The Law Council is pleased that the ALRC will consider the 'appropriate, early and cost-effective resolution of all family law disputes' and will review 'the pressures (including, in particular, financial pressures) on courts exercising family law jurisdiction'.²⁵ The Law Council is optimistic that the ALRC review will result in the proper funding and resourcing of Australia's family law system.
38. However, the ALRC is not due to report to the Government until 31 March 2019 and therefore the implementation of any recommendations is not likely to occur until sometime later. Unless action is taken in the intervening period, the current crisis in the family law system continue.
39. While the number and complexity of family law cases has increased sharply in recent years, resourcing has not adequately increased to compensate. The Law Society of New South Wales has noted particular concern that in the Sydney and Parramatta registries, parties can wait in excess of three years for their matters to proceed from filing the initiating application to final hearing. The Law Council understands that such delays are commonplace across Australia. Delays perpetuated by insufficient funding increase risks and uncertainty for children and victims of family violence and discourage victims from seeking protection through the justice system. These costs compound daily and have a significant and ongoing effect on families.
40. While the Law Council notes that the number of Family Court and Federal Circuit Court judges is considered to be at 'full complement', current judicial workloads and the resulting significant delays are evidence that the full complement is not sufficient to adequately meet demand for the family courts.

24 Federal Circuit Court of Australia, Annual Report 2016-17, 48
<<http://www.federalcircuitcourt.gov.au/wps/wcm/connect/fccweb/reports-and-publications/annual-reports/2016-17/2016-17-annual-report>>.

25 Australian Law Reform Commission, *Review of the family law system*, Terms of Reference
<<https://www.alrc.gov.au/inquiries/family-law-system/terms-reference>>.

Federal Circuit Court

41. Due to significant under-resourcing and in particular, the under-provision of judges, the Federal Circuit Court is failing to meet efficiency targets. In the 2016-17 Budget, the Court was set a target of 90 per cent of final order applications disposed of within 12 months.²⁶ According to the Court's Annual Report only 68 per cent of final order applications were disposed of within 12 months.²⁷ The Court was also set the target of 90 per cent of all other applications disposed of within six months.²⁸ However, only 78 per cent of all other applications were disposed of within six months.²⁹
42. Beyond its significant family law jurisdiction, the Federal Circuit Court has an increasingly broad general law jurisdiction. This increasing jurisdiction, and in particular, the significant increase in the Court's migration caseload, is driving significant delays.

Expanding General Jurisdiction – Migration Matters

43. Migration matters represent a significant portion of the Court's increasing workload. From the 2015-16 financial year to the 2016-17 financial year, the migration workload increased by 40% with migration cases now accounting for more than 50% of the Court's general federal law workload.³⁰
44. In its 2016-17 Annual Report, the Court noted:

*The increase [in Migration cases] is placing pressure on judicial resources ... Although the Court is able to utilise the assistance of registrars at the direction stage, the nature of the jurisdiction is such that most applications require the allocation of judicial hearing and writing time.*³¹

45. The increasing migration workload is clearly impacting on judicial resources and there is little that the Court can do other than list matters out for a hearing. Unlike family law, where the majority of matters filed do not proceed to a final hearing (and are resolved before final hearing), most migration matters require a hearing and the allocation of judgment writing time. The processing of the approximately 30,000 persons who comprise the migration legacy caseload will continue to stretch the Court's already limited judicial resources even further.
46. During the 2016-17 financial year, the Court undertook consultation with stakeholders to explore ways in which to facilitate the timely disposition of the migration workload. In reporting on the findings of this consultation, the Court noted that '[t]he feedback highlighted the need for provision of adequate judicial and other resources as being essential to the timely resolution of the migration caseload'.³²
47. Additionally, funding for legal assistance in immigration review matters remains a significant problem. Despite the significant increases in the immigration review workload very few resources have been directed to legal assistance and the courts to

26 Federal Circuit Court of Australia, Annual Report 2016-17, 43
<<http://www.federalcircuitcourt.gov.au/wps/wcm/connect/fccweb/reports-and-publications/annual-reports/2016-17/2016-17-annual-report>>.

27 Ibid.

28 Ibid.

29 Ibid.

30 Ibid 56, 65.

31 Ibid 66.

32 Ibid.

deal with the backlog. For example, the Primary Application Information Service (**PAIS**) scheme to process the legacy caseload is limited to the “most vulnerable” applicants, leaving the large majority without funded legal assistance.

48. This funding gap has placed immense pressure on immigration lawyers to undertake more pro bono work, conscious that clients cannot afford the fees and will otherwise be left with no legal assistance. When legal assistance is unavailable, vulnerable people, often with limited understanding of Australia’s legal system and or limited English are left to appear for themselves causing significant further delays. The Law Council submits Government must provide this basic level of assistance as an important measure in both ensuring that vulnerable persons in our community are adequately supported to interact with the legal system and to ensure that these person’s do not pose a significant burden on Court time and resources.

Recommendation:

The Federal Government should provide additional resources to the Federal Circuit Court, including addition Judges, Registrars and other staff in order to efficiently deal with the considerable increase in the Court’s migration workload. This should be supported with additional funding for legal assistance services for those people with cases moving through this system.

Funding for the Office of the Australian Information Commissioner

49. The Law Council is concerned that despite relatively small increases in funding in the last two budgets, the Office of the Australian Information Commissioner (**OAIC**) remains under-resourced.
50. The OAIC's responsibilities generally relate to privacy, freedom of information and government information policy.³³ These functions include conducting investigations, reviewing decisions made under the *Freedom of Information Act 1982* (Cth), handling complaints, monitoring agency administration and providing advice to the public, government agencies and businesses.³⁴ OAIC will be exercising a number of additional regulatory functions and oversight roles in the 2018-2019 financial year, including in relation to the operation of the mandatory Notifiable Data Breaches Scheme and the Government's biometric face matching services.
51. Under-resourcing of the OAIC increases the risk of undesirable performance compromises that may adversely affect good regulation, including delay and further pressure for the OAIC to use discretion to decide against acceptance, investigation or determination of complaints. As privacy and information law gathers increasing public attention, it is essential that Australia has a properly resourced independent agency to provide adequate oversight. The Law Council, therefore emphasises the importance of ensuring that the OAIC is appropriately resourced to undertake its increasing functions.³⁵

33 See Office of the Information Commissioner, *About Us* <<https://www.oaic.gov.au/about-us/>>. See also, *Privacy Act 1988* (Cth); *Freedom of Information Act 1982* (Cth); *Australian Information Commissioner Act 2010* (Cth).

34 See Office of the Information Commissioner, *About Us* <<https://www.oaic.gov.au/about-us/>>.

35 The Law Council has adopted this position from input provided by the Law Society of New South Wales.

Recommendation:

That further additional funding be provided to the Office of the Australian Information Commissioner to ensure that it is properly resourced to manage additional responsibilities including the operation of the mandatory Notifiable Data Breaches Scheme and the Government's biometric face matching services.