

27 January 2021

Our ref: LP-MC

Mr Michael Tidball
Chief Executive Officer
Law Council of Australia
GPO Box 1989
Canberra ACT 2601

By email: [REDACTED]

Dear Mr Tidball

2021-2022 Pre-Budget Submission

Thank you for the opportunity to contribute to the Law Council's 2021-2020 Pre-Budget Submission. The Queensland Law Society (QLS) appreciates being consulted on this important advocacy work.

This response has been compiled with input from a number of the QLS legal policy committees including our Competition and Consumer Law, Family Law, Industrial Law, Litigation Rules, Access to Justice and Pro Bono Law Committees.

We support the focus areas outlined in the Law Council memorandum which include:

- improved resourcing of the legal assistance sector;
- improved resourcing of federal courts and tribunals;
- establishment and proper resourcing of a Commonwealth Integrity Commission and a separate Federal Judicial Commission; and
- adequate resourcing for relevant federal agencies and organisations.

We provide the following additional commentary based on feedback received from our members.

Improved Resourcing for the Legal Assistance Sector

Further funding will be essential for the legal assistance sector to manage the demands and logistical challenges arising from COVID-19. It is important to emphasise that prior to the pandemic, the legal assistance sector was underfunded. In our view, the increased demand for legal assistance services as a result of the immediate and ongoing impacts of COVID-19 will continue to compound the need for improved funding and resourcing. QLS does commend the

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funding provided by the Federal Government of an additional \$63 million in funding to frontline legal services to support Australians impacted by COVID-19.

However, more will be needed. The pandemic has and will continue to generate even greater demand for legal resources. There will be increased needs from clients seeking advice in relation, but not limited to; domestic and family violence, credit matters, insurance matters, superannuation claims, hardship applications, insolvency matters, tenancy disputes, and employment law. In relation to the latter, we note the reforms currently being pursued in the industrial relations space. Unless there is adequate funding for both employees and employers to access legal advice and representation, any measures to boost employment conditions and bolster businesses will have limited effect.

Queensland practitioners are also well aware of the long-term impact of natural disasters, such as cyclones and floods, where legal advice is often required by parties many months or even years after the initial impact.

Private firms facing financial difficulties due to the pandemic may need further support as well. Practitioners who provide pro-bono legal assistance, offer reduced rates or who are considered preferred suppliers by Legal Aid, perform a vital role within the community ensuring access to justice.

QLS has particular concerns for practitioners in rural and remote regions. Lawyers practising in those locations play a significant role in their communities which would be compromised if these firms could not continue to offer their services. QLS strongly supports an increase in Legal Aid panel practitioner fees to enable these firms to continue to undertake Legal Aid matters.

The Federal Government should recognise the economic impact of the pandemic on rural, remote and regional communities, including the impact on legal practitioners within those communities. Impacts on these businesses will affect their ability to provide services to clients and should be considered when the Government is reviewing business support packages.

Improved resourcing for Federal Courts, Commissions and Tribunals

General comments

QLS calls on the Commonwealth Government to commit appropriate resources to ensure that our justice system is efficient and effective by providing up-to-date and user-friendly court systems, together with appropriate alternative dispute resolution services.

Our members, their clients (individuals, business and other groups) and the community require access to justice in the way that best suits their needs, noting that Queensland is a significantly decentralised state, with many lawyers and law practices operating in rural and regional locations. The courts need to accommodate these circumstances.

The longstanding delays in the courts, both in respect of matters proceeding to hearing and outstanding judgments, need to be addressed. We are aware that these issues are not unique to Queensland, however, we consider that each registry of a Commonwealth court, commission and tribunal should be assisted to ensure it has the resources appropriate to deal with its specific needs, whether that be additional judicial officers or improved technology and infrastructure.

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For example, federal courts travel to Queensland's regions on circuit and this can sometimes be problematic for the court and for the local state courthouse and jurisdiction. As noted in the Federal Circuit Court of Australia's 2019-2020 Annual Report:

"While the Court appreciates the hospitality of state and territory courts in enabling the Court to service regional and rural litigants, reliance on state facilities poses a number of challenges for the Court, including availability of courtrooms, hours of access, access to technology, court recording and resources such as telephone and video link facilities, and security arrangements.

*The Court is aware of these challenges, not only for litigants and legal practitioners, but also staff, and continues to look for opportunities to improve facilities and resources, and thereby, the efficiency and value of circuits."*¹

The Commonwealth Government should ensure funding is made available to these local courts by liaising with the State courts and governments to enable circuit courts to sit and hear matters without delay and difficulty, and in a way that does not disrupt local court matters. The courts, themselves, do a commendable job in managing these requirements, but additional funding would improve these functions.

Family Law Courts

Chronic underfunding is the most significant impediment to the timely and effective resolution of matters in the family law courts. QLS submits that appropriate resourcing is critical to any significant reduction in court delays. The current demand on court services is such that the capacity to hear family law matters in a timely and effective manner is limited. It often takes considerable time for parties to receive a first return date, secure trial dates and, following trial, to receive judgment.

Extensive delays can exacerbate frustration and conflict between parties. Current wait times are unsustainable and can lead to detrimental outcomes for children and families. In matters involving family violence, these delays potentially expose a person experiencing family violence to greater risk. These delays must be addressed. QLS strongly recommends that family law courts be provided with appropriate, additional resources to allow matters to be heard and determined in a timely manner.

While the proposed court merger purports to address these delays, improvement to efficiency cannot occur without appropriate resourcing. QLS has consistently expressed its opposition to the court merger.

Specially, QLS calls for additional funding is required to maintain court buildings and infrastructure; additional funding of the legal assistance sector; a commitment to the prompt appointment of appropriately experienced and skilled judges; and a commitment to pursuing legislative amendments which have been identified as necessary to improve the operation of the law.

QLS also supports the LCA's position on the need for appropriate funding for Independent Children's Lawyers. Increased funding would allow ICLs to undertake the work required in order to comply with the Guidelines for Independent Children's Lawyers.

¹ [Federal Circuit Court of Australia Annual Report 2019–20](#), page 32.

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We support the view that family report writers are a vital component of a functioning family law system and that perceived problems with the quality of some family reports are the result of a significant shortage in the number of experts prepared to undertake this work and diminution of funding of both in house family consultants and Regulation 7 family consultants. Increasingly few family report writers are willing to undertake Legal Aid funded family reports, as the fee does not adequately reflect the expertise of the family report writer and the significant work provided. In our view, more appropriate funding would facilitate the engagement of appropriately experienced family report writers.

Similarly, an increase in Legal Aid panel practitioner fees would enable appropriately experienced private practitioners to undertake Legal Aid matters.

Federal Court of Australia

Our members share the concerns raised by the Law Council's 2020-21 Deferred Pre-Budget Submission that the Federal judiciary continues to be overworked and under resourced. The Federal Court justices are dealing with significant volumes of material and increasingly complex issues. We submit there is an urgent need for further funding of the Federal Court to enable the allocation of additional resources, including, more judges. By increasing the number of judges, it will widen the pool of experience available which may enable complex cases to be allocated to judges with relevant expertise in particular areas of law.

Federal Circuit Court of Australia

We make similar comments in respect of the Federal Circuit Court of Australia (FCC) which deals with a broad spectrum of matters including family law and child support, administrative law, admiralty law, bankruptcy, copyright, human rights, industrial law, migration, privacy and trade practices.

Each judge appointed to this court needs the requisite training and resources to enable them to hear matters across these jurisdictions.² It is critical that this assistance is provided. The judges also need to be supported by sufficient numbers of registrars and other support staff/registry staff.

The FCC's Annual Report for the year 2019-2020 notes that, as at 30 June 2020, there were 68 judges appointed to the Court, with 15 based in Queensland (page 18) and there were no appointments to the Court in the 2020 financial year (page 20).

However, as outlined above, there is significant strain on the Court from volume and complexity of family law matters. This is coupled with an increase in matters in other jurisdictions, such as migration. We note from this FCC's Annual Report for 2019-2020:

"The pending migration caseload has increased from 7,674 applications in 2017-18 to 12,158 applications in 2019-20. At 30 June 2020, the clearance rate for final order applications in family law was 96 per cent. For migration applications, it was 62 per cent."

² This can be supported by a Federal Judicial Commission.

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To put that in perspective, without further resources, on current filing rates, the pending migration caseload will surpass the pending family law caseload in less than two years. This is impacting the Court broadly, but is having a particular impact on the judges who are trying to accommodate hearing more migration cases in a finite amount of available judicial time, which necessarily comes at the expense of their other work.”³

In addition to migration work, there was increased number of applications filed in the fair work jurisdiction in the 2020 financial year, reflecting the growing importance of this area of law (see page 8 of the report). QLS has repeatedly called for more FCC judges, with experience in this area of law, to be appointed to assist in the effective resolution of these types of claims, for example in actions to recover unpaid wages. Insufficient court resources leads to delay and this is a factor for individuals being able to pursue a claim and recover wages. Delays increase costs and create more uncertainty for the parties.

It is clear that more judicial officers are needed to accommodate this increased case volume and that urgent and long-term, additional funding is needed for this Court.

Fair Work Commission

The Fair Work Commission (**FWC**) experienced a significant increase in its workload as a result of the COVID-19 pandemic. The following is from the Fair Work Commission Annual Report 2019-20:

“While responding to the consequences of the pandemic, the Commission has also seen an increase in its caseload with substantial increases in the number of unfair dismissal matters and workplace disputes. We have responded by reallocating resources, piloting new methods to deal with matters more efficiently, and through short-term assistance from staff of other Commonwealth agencies.”⁴

The work of the FWC in response to the pandemic has been commendable. However, there needs to be a review of capacity and resources going forward. The ability to access staff from other federal courts and agencies might be appropriate at times, where those bodies have capacity, however, this may not always be possible. The Government should plan for future emergencies of this type where there will be an impact on employers and workers, to ensure any measures put in place by the Government can be implemented by the Commission.

The Government should also consider the effects of its proposed industrial relations reform on the FWC’s workload. Further, increased resources for the FWC and Federal Courts should be commensurate with increased funding for the Fair Work Ombudsman. We have noted above that Government has and is undertaking industrial relations reform, both to respond to the impacts of the COVID-19 pandemic and generally.

Reform in this area, and any area, needs to be accompanied by the ability and resources to effect the reform. In this instance, these resources should include those necessary for courts and the FWC, including for their dispute resolution functions, but also for the Fair Work Ombudsman who is statutorily required to, among other functions, monitor compliance with the *Fair Work Act 2009* and fair work instruments.⁵

³ [Federal Circuit Court of Australia Annual Report 2019–20](#), page 3-4.

⁴ [Fair Work Commission Annual Report Access to Justice 2019-20](#), Page 6

⁵ Section 682 of the *Fair Work Act 2009* (Cth).

The impact of the COVID-19 pandemic

Both the Law Council and QLS have made submissions to governments and the courts about the mechanisms put in place to deal with the impacts of the pandemic. QLS and its members are very grateful for the work of the courts during this time, including their efficient and proactive responses to the unfolding emergency and their communication with the profession.

We note that the impacts of the pandemic have not ceased. There are still health directives in place in various forms around the country and new cases in a community will have an impact on the courts' operations in that community for the foreseeable future. Therefore, there should be funding and planning in place to continue with and reinstate appropriate measures as needed to comply with health directives and other advice.

The increased reliance by Federal Courts on teleconferencing and videoconferencing during the pandemic has, in many areas, improved efficiencies and reduced client costs. The reduction in the costs of appearing remotely not only benefits the client, but also the law firm. As stated above, in Queensland, a large number of solicitors practise in small or micro firms and thus, these efficiencies have a substantial impact on the operation of these businesses.

However, as many of these firms are located in regional Queensland, the ability to use technology is often limited by the lack of upgraded infrastructure in a regional courthouse. Addressing this issue should be a priority for all jurisdictions to enable the measures to be truly effective.

It would be beneficial if there was uniformity between the technology used in State and Federal jurisdictions. We appreciate this may not always be possible, however, we would be pleased if there could be engagement between the courts/jurisdictions and governments on this issue.

We call on the Government to review the capacity in each Queensland court location to ensure that the number of judicial officers is at the level of other locations on a per capita basis and, where there is still a need for more funding, make a commitment to provide this funding within a specified timeframe.

Establishment and proper resourcing of a Commonwealth Integrity Commission and a separate Judicial Commission

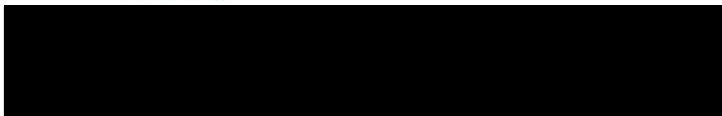
We support the Law Council's call for funding for a Federal Judicial Commission and a Commonwealth Integrity Commission.

Both bodies will require a long-term funding commitment, with regular reviews to ensure appropriate allocation of resources. For the judicial commission, it is imperative that there is sufficient funding to enable the provision of education, training and support, including pastoral care, for judicial officers.

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If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via policy@qls.com.au or by phone on (07) 3842 5930.

Yours faithfully

A large black rectangular redaction box covering the signature of Elizabeth Shearer.

Elizabeth Shearer
President