

21 January 2022

Our ref: LP: MC

Confidential

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

By email: [REDACTED]

Dear Mr Tidball

2022-23 Pre-Budget Submission

Thank you for the opportunity to contribute to the Law Council's 2022-2023 Pre-Budget Submission. The Queensland Law Society (QLS) appreciates being consulted on this important advocacy work. This submission has been compiled with the assistance of the QLS legal policy 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. We have also incorporated some of the issues identified in our draft Call to Parties Statement where we have sought additional funding and resources on behalf of Queensland's legal profession.

Improved resourcing of the legal assistance sector

General comments

Commonwealth Government funding should be adequate, predictable, sustainable and long-term, determined by a transparent and evidence-based model.

We call for the introduction of Justice Impact Tests and/or pipeline funding models to ensure that laws and policies that have downstream impacts on the justice system are identified and that adequate resourcing is provided to justice system agencies to manage the impacts.

In addition, the Commonwealth Government should investigate allocating money seized from proceeds of crime actions as an additional ongoing funding source for legal assistance services.

Rural, regional and remote communities

Queensland is the most de-centralised state in Australia, with a large portion of its population living outside of its capital city.¹ While Queensland has a higher rate of solicitors practising in rural, regional and remote areas when compared to other jurisdictions,² we have received feedback from our members indicating that there is a shortage of private and public practitioners in these areas. Consequently, unmet legal need in rural, regional and remote communities in Queensland is significant.

To address this, we call on the Commonwealth Government to allocate adequate, long-term funding for legal assistance services specifically in regional, rural and remote areas, including funding for the development of incentive programs that encourage solicitors to take up employment in rural, regional and remote communities.

The Government should also improve infrastructure and technology in these areas so that communities are better able to access services, including legal services.

Specialist consumer credit services

QLS has received consistent feedback from our members reporting an increase in the demand for legal services for consumer credit related legal issues. We also note that the academic literature demonstrates that consumer and credit related legal issues remain prominent areas of legal need in Queensland.³

Accordingly, QLS calls on the Commonwealth Government to fund a specialist consumer credit debt legal assistance service in Queensland to meet the increased legal demand.

¹ State Development, Infrastructure, Local Government and Planning, *Queensland regions* (Web Page, November 2021) < <https://www.statedevelopment.qld.gov.au/regions/queensland> >.

² Law Council of Australia, *Rural, Regional and Remote Australians* (Final Report, August 2018) 26.

³ Law and Justice Foundation, *Legal Australia-Wide Survey: Legal Need in Queensland* (Final Report, August 2012) 60.

Impact of COVID-19

The ongoing impacts of the COVID-19 pandemic have resulted in significant disruptions to the legal profession and the delivery of legal services. We have received member feedback indicating that the impacts of COVID-19 on the legal profession have exceeded what was previously expected. While many state and federal border restrictions have eased, businesses, individuals and notably legal service providers and their clients, continue to be significantly impacted by the widespread community transmission of COVID-19.

In particular, legal service providers are struggling to maintain the necessary staffing levels as employees are unwell and/or required to isolate due the virus' spread in our community.

We call for urgent additional resources to be provided to the legal assistance sector. As a minimum, QLS calls on the Commonwealth Government to maintain COVID-19 frontline service delivery and information technology funding.

Aboriginal and Torres Strait Islander Peoples

QLS calls for urgent reform to the way in which Government implements policies and laws affecting Aboriginal and Torres Strait Islander Peoples. There must be clear action and accountability to ensure that recommendations from previous consultations, inquiries and reports are implemented and progressed.

Real and tangible progress is critical to closing the gap in all areas of inequality and to remove the entrenched levels of disadvantage for Aboriginal and Torres Strait Islander Peoples and communities within the context of legal and justice outcomes.

QLS calls on the Commonwealth Government to implement meaningful and evidence-based strategies to address the disparate imprisonment rates and the rates of violence against Aboriginal and Torres Strait Islander Peoples, particularly having regard to the key recommendations of the Australian Law Reform Commission Report into Reducing Indigenous Incarceration. In particular, QLS calls for national criminal justice reforms, including appropriate resourcing and funding commitments to legal assistance service providers, to reduce the incarceration of, and violence against, First Nations Peoples.

Further, QLS urges the Commonwealth Government to commit to working with peak First Nations bodies, including the Coalition of Peaks, to progress and lead all priority reforms, including increased and sustained funding for Aboriginal and Torres Strait Islander Legal Services and Family Violence Prevention Legal Services.

Finally, QLS calls on the Commonwealth Government to provide appropriate funding to increase the number of First Nations mental health support services and practitioners.

Family law matters

QLS calls for additional funding for the legal assistance sector to meet the ongoing demand for family law services and to improve accessibility to the family law system. Additional funding is essential in accessing legal advice and representation, which is key to the resolution of matters and ensuring litigants are properly informed and understand legal matters.

QLS calls for funding specifically to allow for the expansion and continuation of various pilots, including the Lighthouse Project and the Priority Property Pools under \$500,000 pilot, as recommended by the Joint Select Committee on Australia's Family Law System.

Further, QLS appreciates the importance of hearing and considering the views of children as part of family law court proceedings. This invariably and appropriately requires the involvement of experts, such as Independent Children's Lawyers and Court Child Experts, to explore and communicate these views. Given the importance of this, QLS calls on the Commonwealth Government to provide additional funding for appropriate experts.

Section 102NA Matters

Section 102NA of the *Family Law Act 1975* (Cth) provides mandatory protections for parties being cross-examined in certain cases, including where one of the parties has been convicted of, or is charged with, an offence involving violence or a threat of violence.⁴ Section 102NA provides that cross-examination must be conducted by a legal practitioner to prevent personal cross-examination of victims by their alleged perpetrators.⁵

QLS calls for adequate, ongoing funding of the Commonwealth Family Violence and Cross-Examination of Parties Scheme to facilitate the operation of section 102NA, which is reflective of the significant volume of matters which rely on section 102NA.⁶

Addressing violence against women and children

QLS recognises the impact of domestic and family violence in our community. We are committed to advocating for measures which reduce the prevalence of all forms of domestic and family violence, shift cultural attitudes and behaviours and better protect victims.

These measures include an increase in court and legal assistance funding to better respond to demand for these services, including specialist and culturally competent service responses. This should be accompanied by further funding for additional primary prevention and early intervention initiatives, including holistic family support programs and education campaigns.

⁴ *Family Law Act 1975* (Cth) s 102NA.

⁵ *Ibid* s 102NA; Explanatory Memorandum, *Family Law Amendment (Family Violence and Cross-Examination of Parties) Bill 2018* (Cth) 2.

⁶ Explanatory Memorandum, *Family Law Amendment (Family Violence and Cross-Examination of Parties) Bill 2018* (Cth).

Sustainability, climate and disaster response

QLS calls for the implementation of an effective, evidence-based legislative framework to mitigate and adapt to the impacts of climate change. We note the Law Council has recently identified emergencies, including natural and human-generated disasters, as a factor that can exacerbate existing legal problems and result in increased legal need.⁷

To address the significant and far-reaching consequences of these emergencies, QLS calls on the Commonwealth Government to make additional, targeted funding available to the legal assistance sector in recognition of the ongoing and increasing legal need of climate-impacted vulnerable and disadvantaged communities.

Improved Resourcing of Federal Courts and Tribunals

General comments

QLS agrees with the Law Council's observations that the federal courts and tribunals have been chronically under-funded and under-resourced for a substantial period of time.⁸ In order to promote access to, and the administration of, justice, federal courts and tribunals must be appropriately funded and resourced. QLS calls on the Commonwealth Government to appropriately fund and resource the Federal Court of Australia, the Federal Circuit and Family Court of Australia and relevant federal commissions, such as the Fair Work Commission as follows:

- appointing sufficient numbers of judges and members to hear matters expeditiously;
- promptly filling judicial vacancies;
- adequate resources for registries, including staff and technology upgrades to provide for comprehensive electronic case management systems;
- appropriate infrastructure, including:
 - audio video capabilities in all courtrooms and other areas such as interview and break out rooms to allow parties to appear and access legal advice remotely; and,
 - hearing and interview rooms, and separate waiting areas for matters involving children and domestic and family violence; and,
- properly resourcing courts and court services in rural, regional and remote areas.

⁷ Law Council of Australia, *Addressing the legal needs of the missing middle* (Research Paper, November 2021) 13.

⁸ Law Council of Australia, *2021-22 Pre-Budget Submission* (February 2021) 15.

Federal Circuit and Family Court of Australia

The Federal Circuit and Family Court of Australia continues to be overburdened, leading to delays in the resolution of matters and adverse impacts on families. QLS calls on the Commonwealth Government to provide long-term, adequate funding for the Courts to assist in clearing the substantial back-log of cases.

Administrative Appeals Tribunal

We have received member feedback indicating that the Administrative Appeals Tribunal (**AAT**) is significantly under-resourced, which has resulted in substantial case backlogs and lengthy delays in finalising applications before the Tribunal. Recent data from the AAT indicates that the Tribunal has a backlog of 67,752 cases, with only 55% of cases finalised within 12 months.⁹ We note the majority of the backlog can be attributed to the Migration and Refugee Division, which finalised 18% of cases within 12 months.¹⁰ Further, we note the median time to finalise a case in the Migration and Refugee Division is over two years (109 weeks). Our members are of the view that the lengthy delays in finalising an application in the Migration and Refugee Division comes at considerable human cost, especially considering the complex and highly sensitive nature of refugee matters.¹¹

The significant delays associated with the Migration and Refugee Division was commented on in the Report on the Statutory Review of the *Tribunals Amalgamation Act 2015*, where it was recommended that there 'be an immediate enlargement of the membership of the Migration and Refugee Division' to resolve the substantial backlog of cases before the Tribunal.¹² We note that at the time this recommendation was made, there were 53,282 applications on hand. As noted above, on hand applications have increased to 67,752, which emphasises the need for further funding and resourcing for the AAT to manage the increasing caseload demand.

QLS calls on the Commonwealth Government to urgently increase resources for the AAT including the appointment of new members in the Migration and Refugee Division.

QLS acknowledges the considerable challenges faced by government in responding to migration. QLS is concerned about a number of migration policies which are inconsistent with Australia's international obligations. We are also concerned about the lack of funding for legal assistance for asylum seekers, and other vulnerable visa applicants and visa holders in Australia, which impacts both individuals and families seeking support as well as the overall efficiency of the legal system. QLS does not support restrictions on access to administrative review and judicial review of decisions affecting asylum seekers.

⁹ Administrative Appeals Tribunal, *AAT Caseload Report: For the period 1 July 2021 to 31 December 2021*, available here: <<https://www.aat.gov.au/AAT/media/AAT/Files/Statistics/AAT-Whole-of-Tribunal-Statistics-2021-22.pdf>>.

¹⁰ Ibid.

¹¹ Ibid.

¹² The Honourable Ian Callinan AC QC, *Report on the Statutory Review of the Tribunals Amalgamation Act 2015* (Report, July 2019) 6 <<https://www.ag.gov.au/legal-system/publications/report-statutory-review-tribunals-amalgamation-act-2015>>.

Providing certainty and security for workers and employers

Over the past few years there have been a number of inquiries into the payment of entitlements to workers, including migrant workers, and other related issues. These inquiries have resulted in legislative amendment to introduce new and increased penalties for employers and related entities.

However, in QLS's submissions to these inquiries, we have repeatedly advised that these amendments will not be a silver bullet. They must be accompanied by measures to assist workers to exercise their rights to recover entitlements and should fundamentally include increased resources for courts and commissions. Reducing delays in resolution of a proceeding by the appointment of more judges, specifically to the Federal Circuit Court and Family Court, will enable more workers to achieve justice.

In addition to supporting workers, the resources directed to the Fair Work Ombudsman (FWO) and the legal assistance sector so be appropriate so workers and employers, particularly small businesses can access advice and representation from qualified legal professionals, irrespective of their financial situation.

Adequate Resourcing for Relevant Federal Agencies and Organisations

Addressing gender inequality and unsafe workplaces

Gender inequality has significant consequences for women, their children and the community more broadly. QLS calls for the implementation of measures aimed at addressing unsafe workplaces, gender inequality, sexual harassment and discrimination. In particular, QLS calls for a commitment from the Commonwealth Government to continue resourcing the roll-out of campaigns aimed at challenging the drivers of gender inequality, such as the Stop it at the Start Campaign. Further, there should be a commitment from the Commonwealth Government to support and fund a full national roll-out of Our Watch's whole of-school respectful relationships program.

Protecting consumers

QLS is committed to working with Government to protect the rights of consumers. QLS calls for a commitment from the Commonwealth Government to provide adequate resourcing of regulators, particularly the Australian Competition and Consumer Commission to enable its enforcement program to be carried out, which includes the ability to take action against *Australian Consumer Law* and other consumer law breaches.

Fair Work Ombudsman

As stated above, protecting the rights of workers and employees must involve appropriate funding of courts, commissions and other bodies such as the FWO. The FWO's annual report

2020-2021¹³ sets out the impact of the COVID-19 pandemic on the work it undertakes. We note the FWO was allocated an additional \$46.3 million in funding from the Government over 3 years, from 2019–20 to 30 June 2022. We call on the Government to review any additional need for funding as the effects of the pandemic continue to change.

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



Kara Thomson
President

¹³ <https://www.fairwork.gov.au/sites/default/files/2021-10/fworoce-annual-report-2020-2021.pdf>