THE LAW SOCIETY OF NEW SOUTH WALES

2019 STATE ELECTION PLATFORM

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OF NEW SOUTH WALES

INTRODUCTION

The Law Society of New South Wales is the voice of the solicitor arm of the legal profession, representing the interests of the community through its members. We encourage debate and actively drive law reform issues through policy submissions and open dialogue with governments, parliamentary bodies, the courts, and other stakeholders in the justice system.

Lawyers perform a range of valuable roles in the community, whether it be the provision of pro bono services, advice and community legal education through legal assistance services, or providing expert advice and facilitating the just and efficient functioning of the economy through the full range of legal transactions that take place in a modern economy. Lawyers also have strict ethical obligations to the courts and their clients. These ethical obligations have a very long history and are well established at law. The Law Society assists all solicitors in NSW deliver services that are of the highest professional and ethical standards. In this way, lawyers play a valuable consumer protection role for their clients.

Lawyers have a crucial role to play in defending the rights of the citizen – providing them with professional, independent advice, and representing them when their interests are at stake. Protecting citizens' rights is not only achieved through the creation of specific rights in legislation and the preservation of judicial discretion to deal with each case on its merits, but also through ensuring that new legislation does not unfairly encroach on existing rights. The very process of scrutinsing legislation in Parliament is fundamental to ensuring that rights are not extinguished for the sake of political expediency.

The Law Society's Council and Committees have identified the following issues as key areas of potential for law reform after the 2019 election. We seek commitments from the major parties to constructively address these issues.

BETTER RESOURCES FOR COURTS AND THE JUSTICE SYSTEM, PARTICULARLY IN RURAL AREAS

PROMOTING INVESTMENT AND BUSINESS INNOVATION

UPHOLDING THE RULE OF LAW

REDUCING THE INCARCERATION RATE

INDIGENOUS JUSTICE

BETTER RESOURCES FOR COURTS AND THE JUSTICE SYSTEM, PARTICULARLY IN RURAL AREAS

Establishing residential drug and alcohol rehabilitation facilities, and the expansion of the Drug Court in country New South Wales

Drug and alcohol use is a significant underlying issue for a large proportion of people who come into contact with the criminal justice system.

The Law Society has urged the NSW Government to take measures to invest in community-based health treatment such as drug and alcohol rehabilitation centres, and introduce reforms to better enable courts to impose alternatives to full-time imprisonment, where appropriate.

A significant increase in investment in drug and alcohol rehabilitation services is required, particularly in regional, rural and remote areas. We note the recent Legislative Council Committee recommendation that the NSW Government significantly increase funding to drug and alcohol-related health services and establish more residential rehabilitation and detoxification services throughout regional NSW, including facilities for women and children, Aboriginal people, and young people.[1]

The NSW Government currently devotes significant resources to the detection and policing of drug and alcohol-related offences, but does not provide sufficient resources for the provision of residential drug and alcohol rehabilitation facilities to address underlying issues.

The use of prohibited drugs by members of the public is a major health problem as well as a criminal justice problem. The Drug Court aims to treat health issues as well as justice and social issues, and to prevent harm to the community by offences committed as a result of drug dependencies. Many offenders the Drug Court deals with have serious issues that would otherwise see them continue to offend in the community. Imprisonment has often failed to deter them from committing crime.

Studies by the NSW Bureau of Crime Statistics and Research have found that the Drug Court program is more cost-effective than prison in reducing drug-related crime.[2] Evaluations of the Drug Court demonstrate that the intensive use of justice system resources in the community, and the evaluation and monitoring of an offender who gets treatment for drug dependency, is effective in changing lives and is evidence based.

The Drug Court currently sits at Parramatta, Toronto and Sydney. The Law Society supports the expansion of the Drug Court beyond the current catchment areas, and strongly endorses the Legislative Council Committee recommendation that the NSW Government pilot a Drug Court in Dubbo in parallel with an increase in rehabilitation services for the area.[3]

Expanding the Drug Court will help ensure that a greater number of drug-dependent offenders are offered the most appropriate treatment and rehabilitation, which will assist in reducing recidivism. This will require appropriately funded and resourced detoxification and rehabilitation services to support the work of Drug Courts.

The Law Society of NSW calls on all parties to commit to the expansion of drug and alcohol rehabilitation facilities and the Drug Court in rural, regional and remote areas.

1 Provision of drug rehabilitation services in regional, rural and remote New South Wales, Legislative Council Portfolio Committee No. 2 - Health and Community Services, August 2018, Recommendation 2.

2 'Intensive judicial supervision and drug court outcomes: Interim findings from a randomised controlled trial', Bureau of Crime Statistics and Research, Crime and Justice Bulletin, Number 152 November 2011; 'The NSW Drug Court: A re-evaluation of its effectiveness', Bureau of Crime Statistics and Research, Crime and Justice Bulletin, Number 121, September 2008; 'New South Wales Drug Court evaluation: Cost effectiveness', Bureau of Crime Statistics and Research 2002.

3 Provision of drug rehabilitation services in regional, rural and remote New South Wales, Legislative Council Portfolio Committee No. 2 - Health and Community Services, August 2018, Recommendation 5.

Increase in Legal Aid funding for private practitioners

Without an immediate increase in funding to allow for proper remuneration to attract private practitioners of sufficient skill and expertise, Legal Aid NSW will struggle to continue to provide a mixed-service delivery model, particularly in rural areas.

The combination of a low hourly rate paid to private practitioners and insufficient time claimable under the fee scales means the system is in crisis. Unless the Government provides substantial additional funding, the issues will remain.

We suggest that an increase in the hourly rate to $250 an hour with an annual review and CPI increase, and an increase in the time claimable to undertake matters, would significantly ameliorate these issues.

Many solicitors, particularly experienced solicitors, have reported that they take on legally aided work at a loss and view conducting Legal Aid matters as a pro bono service. While pro bono work is a highly commendable and long-standing tradition of the profession, it is not a substitute for a properly funded legal aid system.

It is often not possible for a private practitioner to properly discharge their professional responsibilities within allocated timeframes. In our view, it is due to private practitioners working many additional unpaid hours that has kept the system going for so long, and this is no longer sustainable.

If fee amounts and timescales for undertaking work are not increased as a matter of urgency, there will continue to be a significant withdrawal of experienced solicitors from legally aided matters. This is resulting in the 'juniorisation' of legal aid work, and a diminution in the quality of legally aided matters. There is a risk that the mixed-service delivery model will collapse due to insufficient numbers of private practitioners undertaking legally aided work.

The Law Society notes that in the latest Budget the NSW Government allocated an additional $10 million in funding for Legal Aid NSW to pay solicitor and counsel fees under the early guilty plea reforms. This funding is limited to committal matters at the Local Court stage only and does not cover fees for trials or appeals. The funding does not extend to other criminal matters, or to family or civil matters. While the funding is a step in the right direction, it does not address our overarching concerns.

The Law Society of NSW calls on all parties to commit to increasing the hourly Legal Aid rate to $250, future CPI increases, and an increase in the time claimable to undertake matters.

Committing adequate funding to the legal assistance sector

Adequate legal aid services are critical in ensuring fairness and efficiency in our court system and are essential to providing access to justice for the most financially disadvantaged.

While the Law Society of NSW welcomes better resourcing of the community legal assistance sector, funding cuts have forced new restrictions on legal aid availability in both criminal and civil cases. In criminal law matters, this means that only those facing a term of imprisonment or those with "special circumstances" now qualify for legal aid.

Civil law restrictions affect several types of matters, including medical negligence, personal injury and neighbourhood disputes. While pro bono work is a highly commendable and long-standing tradition of the profession, it is not a substitute for a properly funded legal aid system. The Law Society has consistently maintained that NSW Treasury should fund legal aid as a core priority of government. Unmet legal need has consequences that have downstream effects in other areas that affect government spending, such as health, care and protection, education and housing.

Following the Royal Commission on Aboriginal Deaths in Custody, NSW created a law which gives any Aboriginal person who is taken into custody the legal right to speak immediately with a lawyer from the Aboriginal Legal Service. To comply with the law, the ALS runs a 24-hour legal advice phone line which has been successful in improving wellbeing and access to justice for Aboriginal people in police custody. Unfortunately, the phone line has fallen victim to argument between the Commonwealth and State governments about funding responsibility. The Law Society urges NSW political parties to commit to ongoing funding of this essential service.

The Law Society of NSW calls on all parties to commit to adequate ongoing funding for the legal assistance sector.

A new court facility in the Macarthur region

The Law Society calls for a new multi-jurisdiction justice precinct to replace outdated, overflowing and unsafe court facilities in the Macarthur region.

In Macarthur, an explosion in the population – projected to double from around 300,000 to 600,000 in the next 20 years – is likely to put even greater pressure on the courts and legal services that are already at capacity. The three local courts at Camden, Campbelltown and Picton are ill-equipped to manage backlogs in criminal and civil cases. For victims of crime and residents seeking resolutions to business and family disputes, it means waiting inordinate lengths of time for justice.

Police have said court backlogs in the Macarthur region are already absorbing too much police time that could be better spent responding to and investigating crime. Residents and court users must also travel long distances to Wollongong, Parramatta or Sydney to resolve family disputes as there is no Federal Circuit Court in the region. This adds significant stress and cost to families.

Crime prevention requires investing in infrastructure to ensure justice can be served both now and into the future. It is particularly concerning that Camden and Picton Local Courts do not have adequate security facilities for many types of cases, including apprehended violence orders relating to family violence. The courts across NSW must be equipped with necessary resources to administer justice.

The Law Society of NSW calls on all parties to commit to funding the construction of a new multi-jurisdiction justice precinct in the Macarthur region.

Maintaining court services in country NSW

The Law Society has regularly written to the Government regarding the closure or partial closure of court houses in rural and regional NSW. Litigants and their legal representatives are frequently forced to travel long distances to court, raising significant access to justice concerns.

We understand that in several cases, consideration has been given to the judge appearing by audio-visual link (AVL) from Sydney. While modern technology such as AVL is welcome to assist in the administration of justice, the Law Society has concerns about AVL replacing the attendance of a judge at court hearings.

The Law Society is also concerned that limited sitting periods in rural courts may result in an increased number of matters being allocated to courts in Sydney, resulting in increased costs for rural litigants.

The Law Society is concerned that court closures in remote areas have a disproportionate effect on the most disadvantaged in our community, including the elderly, sick, unemployed, disabled, and Indigenous Australians.[4]

The Law Society of NSW calls on all parties to commit to long-term funding solutions for court services in rural, regional and remote areas.

4 M. Cain, D. Macourt, & G. Mulherin, 2014, Lawyer availability and population change in regional, rural and remote areas of New South Wales, Law and Justice Foundation of NSW, Sydney. The Report notes that when rural and remote areas lose residents, as is occurring in Cobar and Bourke (p11), it creates pockets of concentrated disadvantage and high needs groups in terms of their vulnerability to legal problems (p19) http://www.lawfoundation.net.au/ljf/site/articleIDs/6483474887556F6FCA257DAA001D6AA1/$file/Lawyer_availability_RRR.pdf

PROMOTING INVESTMENT AND BUSINESS INNOVATION

Reforming payroll tax

The Law Society notes that a review of payroll tax administration is an early priority for the newly-appointed NSW Productivity Commissioner.

The Law Society supports this review and encourages all parties to commit to a thorough review of both the administration and efficiency of payroll tax. The cost of compliance can be high for NSW businesses, especially those that also operate in other states and territories, and a program of tax reform is warranted, including, in the long term, considering the future of the tax in the context of further tax reform at the Commonwealth level.

The Law Society of NSW calls on all parties to commit to a thorough review of the administration of payroll tax, including options for reform in the medium and long term.

Fostering digital innovation

Where regulation is justified, the Law Society suggests that tools and services can be developed to provide accessible and streamlined compliance.

We note that the NSW Government has entered into a strategic partnership with CSIRO's Data61, the Australian Government's data innovation network which is exploring opportunities to maximise the value of public data via their project 'Regulation as a Platform'.

Regulation as a Platform allows users to leverage the regulatory infrastructure to develop tools and services to help reduce the compliance burden. The Law Society's view is that this is an important project for supporting the reduction of red tape and improving the regulatory framework overall.

We understand that Data61 is looking for projects and support to progress the digitisation of legislation. We would welcome the opportunity to work with government and Data61 to identify appropriate projects.

The Law Society of NSW calls on all parties to commit to fostering digital innovation, particularly in the field of easing the burden of regulatory compliance.

Promotion of Sydney as a professional services hub in the Asia-Pacific

Sydney is uniquely placed to be further developed into an international professional services hub, particularly for legal services.

It has the largest legal market in Australia, and pinnacle organisations such as Law Firms Australia and LAWASIA are headquartered in Sydney. Sydney's connections with national and international markets can be fostered and grown to be a regional leader.

The growing size of the profession, the robust regulation of the profession, and the unimpeachable integrity of the court system are all strengths that put Sydney in an ideal position in which to conduct international business.

The Law Society calls on all parties to commit to promoting Sydney as a professional services hub for the Asia-Pacific region.

Ensuring that planning controls are operating efficiently

The Law Society notes the significant reforms to environmental planning and development regulation in recent years. Our interest is in ensuring that these reforms provide efficient and fair processes to ensure that development proceeds in an orderly and considered fashion.

The establishment of Local and Regional Planning Panels has added independence to the planning process, but appears also to be creating some procedural problems. When a matter proceeds to the Land and Environment Court there are issues regarding the relationship between the planning panel and the relevant council, which can complicate participation in court-directed conciliation conferences. This can lead to delays which compromise investment and growth for our community.

The Law Society of NSW calls on all parties to amend environmental planning legislation to ensure the appropriate procedural framework is in place to minimise unnecessary delays to the implementation of planning decisions.

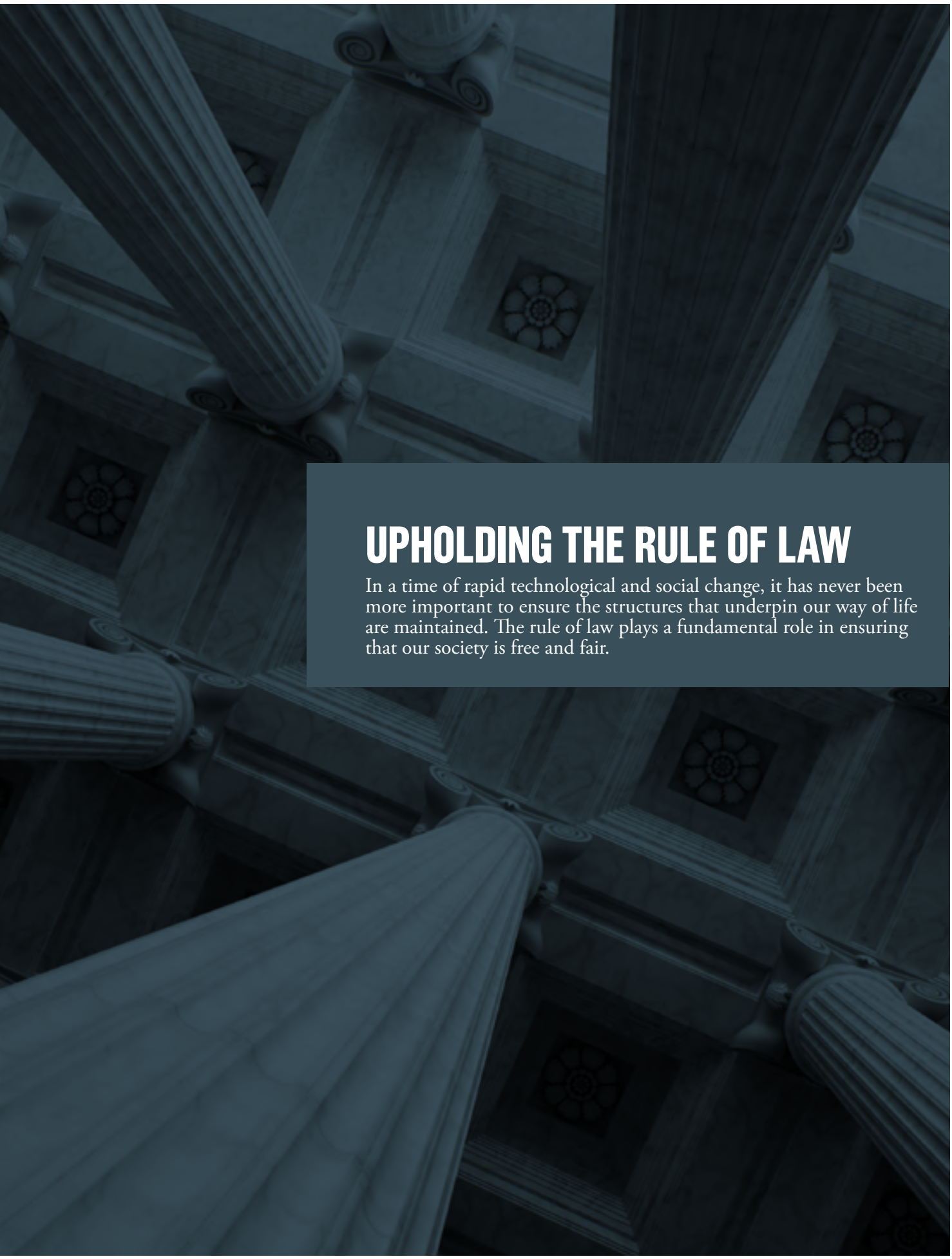
Reducing unnecessary regulatory burdens

The Law Society supports initiatives to reduce any unnecessary or excessive regulatory burden on businesses.

The regulatory burden imposed on businesses can be complex and difficult for businesses to navigate, costing time and money and, ultimately, reducing productivity. The imposition of any new regulatory measures, particularly those affecting small businesses, should, in our view, be the subject of rigorous cost-benefit analysis and public consultation.

We welcome the priority that the new Productivity Commissioner will give to efforts to improve the quality of regulation and remove unnecessary costs from the system.

The Law Society of NSW calls on all parties to commit to reducing unnecessary regulatory burdens.



UPHOLDING THE RULE OF LAW

In a time of rapid technological and social change, it has never been more important to ensure the structures that underpin our way of life are maintained. The rule of law plays a fundamental role in ensuring that our society is free and fair.

Promoting and protecting privacy and the use of data

In the context of modern communication and technology, there is an ever-increasing number of issues arising in relation to privacy and data. These include online privacy issues, regulation of the collection, retention and use of data, and regulation of the use of surveillance techniques in both public and private sectors.

The Law Society calls for the Information and Privacy Commission NSW (IPC) to receive greater funding. The IPC was established in 2011 to ensure that individuals and agencies are able to access consistent information, guidance, assistance and training on data access and privacy matters, and provides information on privacy laws in NSW and methods of protecting personal information. The Information Commissioner provides information on and assists with accessing government information in NSW. The IPC also promotes and protects privacy and data access rights in NSW.

We support the promotion of open government. In September 2011, the NSW Government released the report *NSW 2021: A Plan to Make NSW Number One*, which called for improved government transparency by increasing access to government information and highlighted the community's right to openness, accountability and transparency in government decision-making and information. We note that in June 2018, the NSW Information Commissioner released the *Charter for Public Participation – a guide to assist agencies and promote citizen engagement*, which has been designed to assist government agencies with complying with the *Government Information (Public Access) Act 2009*. We consider the IPC's role to be vital in ensuring the NSW Government continues to prioritise this important issue. We also note the distinction between openness in relation to the data that drives government decision-making, and the protection of personal information.

We note that there is currently no comprehensive national framework for consistent regulation and protection of health information across public and private sectors. Instead, there are overlapping and fragmented federal, state and territory laws which differ depending on who holds health information. Where it leads to greater security of information, the Law Society strongly believes this complex framework should be consolidated and simplified. The Law Society also supports the harmonisation of all federal, state and territory privacy laws, which we consider to be particularly important given the increasing complexity and public awareness in this area.

The Law Society of NSW calls on all parties to commit to:

- increasing funding for the NSW Information and Privacy Commission
- promoting open government
- harmonising health privacy laws
- harmonising federal and state/territory privacy laws.

Protecting the rights of the injured

Compulsory third party motor accidents insurance (CTP) is designed to support people injured in traffic accidents. Workers compensation insurance is designed to support employees if they are injured at work or become sick as a result of their work.

Access to justice has become a major issue in personal injury matters. The current CTP insurance and workers compensation schemes have eradicated the assistance that lawyers can provide many claimants. As a result, many people are unable to access statutory entitlements. It is unacceptable that claims are dealt with in circumstances where claimants do not have access to appropriate legal advice. Lawyers play an essential role in providing clients with independent advice that is in their best interests. We believe the systems and processes that have been established as a substitute for this are flawed, insufficient and disproportionately affect the most vulnerable members of the community. Unfettered access to legal representation is important in ensuring parties are able to obtain the best and most reasonable outcomes.

We believe it is important that the benefits provided for under both the CTP insurance and workers compensation schemes is increased to more adequately reflect the gravity and seriousness of the injuries sustained in these matters. We also believe any dispute resolution system for CTP insurance and workers compensation matters needs to be dealt with by an independent, appropriately staffed and properly qualified tribunal. This tribunal should be completely separate from the government bureaucracy and the State Insurance Regulatory Authority (SIRA) – the regulator of both schemes.

Given the complex nature of both CTP and workers compensation matters, it is fundamental that costs regulations allow for a realistic and reasonable level of costs. The legal profession should not have to effectively subsidise personal injury matters by being required to conduct work on a pro-bono basis. This undermines the quality of work done by lawyers, impacts directly on the outcomes parties achieve, and reduces the viability of the legal profession.

The Law Society will continue to advocate for the Government to appropriately review the contracting-out threshold and the definition of minor injury in the new CTP insurance scheme to ensure they provide fairness to all claimants.

The Law Society of NSW calls on all parties to commit to:

- preserving access to legal advice for claimants, irrespective of the degree of injury
- enhancing benefits available under the CTP and workers compensation schemes
- ensuring that disputes are determined by a tribunal that is independent of the scheme regulator
- implementing realistic costs regulation which provides a reasonable level of costs
- reviewing the new CTP scheme.

Promoting practical ways to report and address elder abuse

Elder abuse refers to the abuse or neglect of older people by family, friends or carers and other people the older person may trust. As Australia faces an ageing population, preventing the growing reach of elder abuse is vital.

Psychological and financial abuse are the most common types of elder abuse. Psychological abuse includes verbal abuse, name calling, bullying and harassment. It can also involve repeatedly telling an older person they have dementia as well as threatening to put them into a nursing home. Financial abuse includes taking an older person's money or belongings, forcing an older person to sell their property or hand over assets, incurring bills for which the older person is responsible, and abusing power of attorney arrangements. Other types of elder abuse include physical abuse, sexual abuse and neglect, which encompasses failing to provide necessities of life such as food, shelter or medical care.

In 2016, the Australian Law Reform Commission (ALRC) released a report with recommendations addressing elder abuse. The Law Society strongly supports implementing the ALRC's recommendations to develop safeguards against the misuse of enduring powers of attorney and enduring guardianship documents. Safeguards should include:

- requiring the appointed decision-maker to support and represent the will, preferences and rights of the principal;
- enhancing witnessing requirements so the attorney must have the instrument explained by a legal practitioner before accepting the appointment, and the legal practitioner thereafter certifies the attorney's understanding of his or her obligations;
- restricting an attorney acting in conflict transactions;
- restricting the persons who may be an attorney;
- setting out the types of decisions that are outside the power of a person acting under an enduring document; and
- mandating basic requirements for record keeping.

The Law Society also notes the recent release of the NSW Law Reform Commission's Review of the *Guardianship Act 1987*. We acknowledge the detailed consideration of the issues by the Commission and support in-principle the implementation of the Commission's recommendations in a new Act covering assisted decision-making arrangements, including in relation to advanced care directives, and the right of a legal representative to appear before the Tribunal without seeking leave..

The Law Society believes an appropriately-resourced Office of the Public Advocate should be established. The Public Advocate should be given the power to investigate anonymous reports of elder abuse and take appropriate action.

The Law Society is concerned about the lack of public awareness of elder abuse. We consider that the public should be better educated about the types of elder abuse that occur, the ways financial abuse can be perpetrated, and the methods that should be adopted to avoid elder abuse.

The Law Society of NSW calls on all parties to commit to:

- establishing an Office of Public Advocate with power to investigate elder abuse
- increasing public awareness of elder abuse
- implementing Recommendation 5-1 of the 2017 ALRC Report into Elder Abuse relating to safeguarding the misuse of enduring documents through state and territory legislation
- implementing the recommendations of the Law Reform Commission's Review of the Guardianship Act 1987.

Protecting the security of e-conveyancing

The term "electronic conveyancing" refers to a conveyancing transaction where practitioners settle the transaction electronically. Electronic conveyancing does not cover the whole of the conveyancing transaction; just the preparation for and execution of settlement and registration. In relation to the settlement itself, the platform is essentially a virtual settlement room.

The timetable for transition to electronic conveyancing was announced by the NSW Government on 28 February 2017, and, from 1 July 2019, any conveyancing transaction that can be lodged electronically must be lodged electronically.

Electronic conveyancing can have a number of benefits. These include greater assurance and protection for parties that dealings will be registered almost immediately after settlement. This avoids the risk inherent in delays, and means a reduction in time and cost spent chasing mortgagees (both discharging and incoming) and other parties. It also means increased transparency of parties' readiness to settle through the workspace, eliminates the time and cost involved in instructing staff or agents, and saves attendance at physical settlements and lodgement at land registries.

However, it is vital that electronic conveyancing is secure and provides adequate protections for practitioners and clients from the risk of fraud. If there is to be more than one network operator, all operators must work together seamlessly, and avoid the need for users to subscribe to multiple systems.

The Law Society has worked with the Office of the Registrar General to ensure the regulatory framework is robust. However, we will continue to monitor the take-up of e-conveyancing to make sure any further reforms are pursued quickly such that practitioner and consumer faith in the system is not compromised, and any gaps in protection are quickly filled. The framework must require any network operators to provide appropriate consumer protection guarantees.

The Law Society of NSW calls on all parties to commit to keeping the take-up of e-conveyancing under review and implementing any necessary safeguards to ensure e-conveyancing is the safest and most secure method for settling land transactions.

A Human Rights Act for NSW

The Law Society's longstanding position is to support the enactment of human rights legislation in NSW.

In NSW, there continue to be laws that encroach upon the common law and human rights of individuals, including laws that criminalise association, limit the right to protest, and encroach upon legal professional privilege, the presumption of innocence and the privilege against self-incrimination. Some of these encroachments are serious, such as allowing children as young as 14 to be detained for two weeks for questioning without charge.

The existing legislative scrutiny mechanisms do not provide sufficiently strong safeguards against legislative encroachment. For example, studies about the effectiveness of the NSW Legislation Review Committee have identified an "entrenched culture" held by Parliament of "ignoring and deflecting the Committee's advice".[5] We note it is not uncommon for legislation to pass within 24 hours, with no possibility of public scrutiny.[6]

There is a clear need for better safeguards of individual rights and freedoms in NSW.

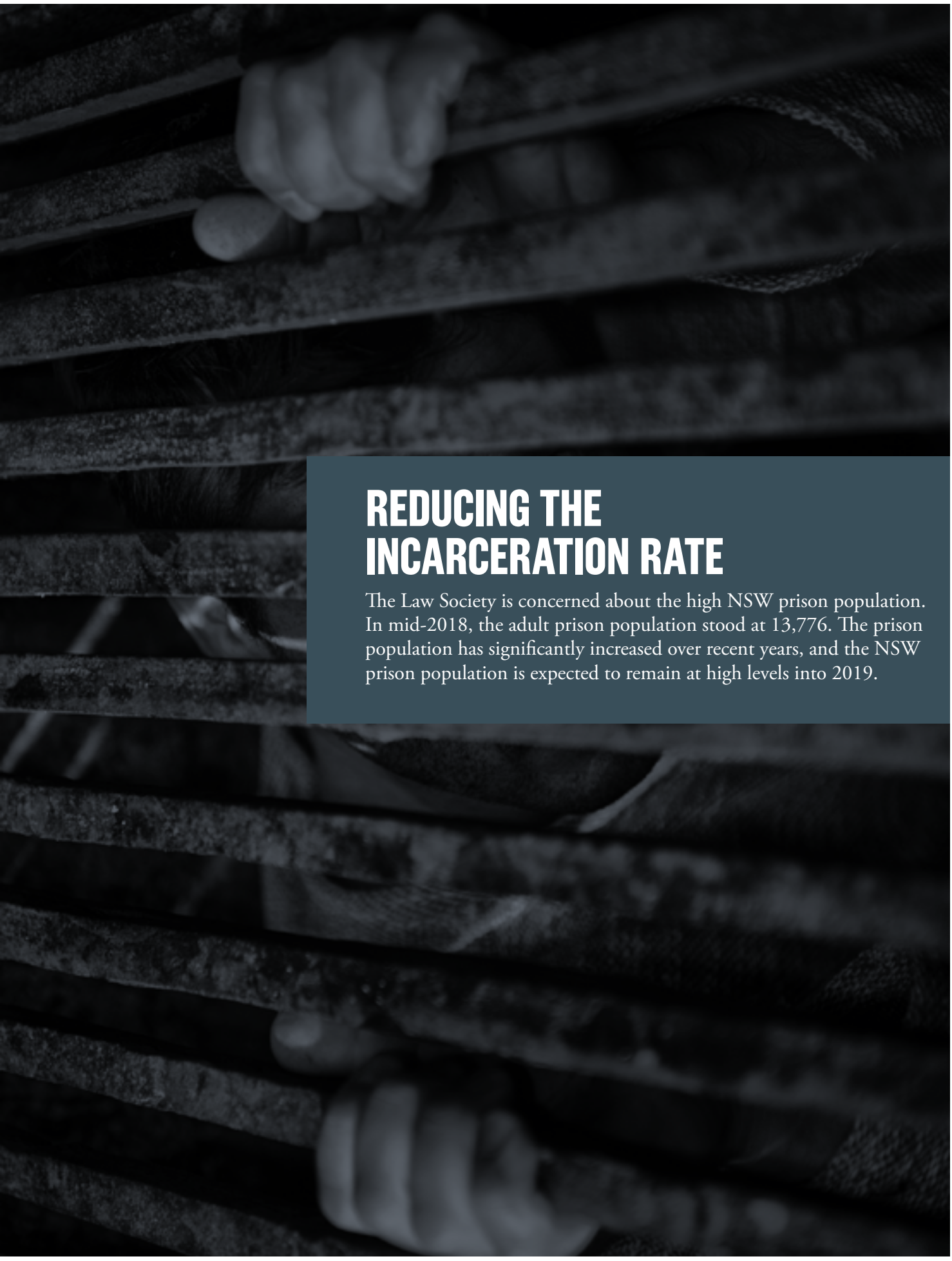
Australia is the only common law country with neither a constitutional nor federal legislative bill of rights. Arguably, it is more important on a state level that a legislative human rights act exists, given that states have jurisdiction over matters that can have a significant adverse impact on the rights of individuals, such as crime, health, education, housing and homelessness.

The ACT and Victoria have had in place for a long time human rights legislation. The Queensland Government has announced it will enact human rights legislation.

The Law Society of NSW calls on all parties to commit to enacting human rights legislation.

5 L McNamara and J Quilter, "Institutional Influences on the Parameters of Criminalisation: Parliamentary Scrutiny of Criminal Law Bills in New South Wales" (2015) 27(1) Current Issues in Criminal Justice 21

6 For example, the Liquor Amendment Act 2014, the Independent Commission Against Corruption Amendment (Validation) Act 2015, the Sydney Public Reserves (Public Safety) Act 2017, and the Terrorism Legislation Amendment (Police Powers and Parole) Act 2017.



REDUCING THE INCARCERATION RATE

The Law Society is concerned about the high NSW prison population. In mid-2018, the adult prison population stood at 13,776. The prison population has significantly increased over recent years, and the NSW prison population is expected to remain at high levels into 2019.

The Law Society has repeatedly raised concerns about the successive 'record highs' of the NSW prison population and the impact this has on the courts and the justice system as a whole. Incarceration is expensive: figures from Corrective Services NSW suggest the daily cost of keeping a person in custody is $172.80.[7] However, we note that the figures provided by the Productivity Commission *Report on Government Services 2018* suggest the daily cost of housing prisoners in NSW is closer to $218.[8] A continually increasing prison population generates substantial new capital costs, requiring new prison facilities, which can be difficult for communities to accept.

In addition to the substantial direct economic cost of incarceration are indirect economic costs. These include a loss of employment and a deterioration of an inmate's skills. Inmates are removed from economic productivity and contribution. Released inmates often find it difficult to gain employment, and many have no accommodation and become homeless. Both factors lead to an increased likelihood of reoffending.

Further, the incarceration of adults affects not only the individuals involved, but also their families and communities. This puts children at risk of being placed in care, which is well documented as increasing children's contact with the criminal justice system.[9]

Released inmates have high unemployment rates and poor health outcomes. Governments therefore experience indirect costs through increased demand for health and welfare services, both for inmates and their families.

There have been recent increases in funding for Corrective Services to house the prison population, as well as for police, but the Local and District Courts continue to struggle with enormous backlogs, causing significant instability and delay throughout the NSW justice system.

We welcomed increased funding for the District Court in late 2018, including the appointment of new judges, but there is still much work to be done.

Delays impact on the quality of evidence available to the Court in deciding matters as witnesses' memories fade, or witnesses become incompetent or unavailable to give evidence. Delays in the finalisation of matters have serious financial and emotional consequences for parties who turn to the justice system for assistance. Victims of crime face the stress of delayed justice, placing particular hardship on vulnerable people, including victims of domestic violence and sexual assault, as well as people with mental illness. While awaiting the finalisation of their matters, accused are spending more time in custody on remand, without full access to rehabilitative services that lessen the chance of reoffending when later released into the community.

We recognise there are a number of criminal justice reforms currently being implemented to try to reduce delays in the criminal justice system, but we urge all parties to consider further justice reinvestment approaches to ease pressures on the system.

We also call on all parties to commit to tasking NSW Treasury with developing and implementing an integrated funding model which recognises that increased funding or legislative reform in different parts of the criminal justice system inevitably has impacts on other parts of the system. Increases in police numbers generally lead to increased arrests, and more matters proceeding to the courts. New offences or increased penalties also have flow-on impacts that require additional resources. However, these resource requirements are not

7 Corrective Services NSW, NSW Prison System Fact Sheet 1, April 2018: https://www.correctiveservices.justice.nsw.gov.au/Documents/CSNSW%20Fact%20Sheets/FACT_SHEET_1_PRISONS.pdf

8 Productivity Commission Report on Government Services 2018, Table 8A.17: https://www.pc.gov.au/research/ongoing/report-on-government-services/2018/justice/corrective-services/rogs-2018-partc-chapter8.pdf

9 Australian Law Reform Commission, Report 133, Pathways to Justice—An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples, December 2017, p127 https://www.alrc.gov.au/sites/default/files/pdfs/publications/final_report_133_amended1.pdf

identified early, and seldom is additional funding made available at the appropriate time. This leads to a system in crisis, as currently seen.

Below are a number of considered and humane initiatives aimed at reducing the incarceration rate. The incarceration rate of Indigenous people is of particular concern, and is dealt with separately in the section on Indigenous justice.

Diversion from the criminal justice system

Adults

People with cognitive and mental health impairments are over-represented throughout the criminal justice system.[10] The Law Society strongly supports increased diversion at all stages of the criminal justice system for people with cognitive and mental health impairments. Effective diversion requires offenders to engage with appropriate and adequately resourced treatment and service providers.

Diversion can benefit both the offender and the wider community by addressing the causes of offending, and reducing offending behaviour, and may have costs benefits such as reducing the costs of imprisonment and hospital readmissions.

We note the recent Government announcement that it is implementing many of the recommendations of the NSW Law Reform Commission reports on people with cognitive and mental health impairment in the criminal justice system, and we look forward to this occurring.

However, we are concerned that the proposed reforms may not include making section 32 of the *Mental Health (Forensic Provisions) Act 1990* (NSW) available in the District Court.[11] Section 32 is the main diversionary provision for people with cognitive and mental health impairments available to magistrates in the Local and Children's Court. The NSW District Court currently has no diversion options for mentally ill and impaired people. As the options currently stand, the pathways for people with mental illness and cognitive impairments are:

- To raise the mental illness defence
- Raising fitness
- Mental illness and cognitive impairment being taken into account on sentence, that is, being dealt with at law

Points 1 and 2 are reserved for the most serious of mental illnesses and impairments and only apply to a very small proportion of people charged with criminal offences.[12]

We further submit that broadening the application of section 32 to the District Court is crucial as a means of reducing the incarceration rate of Indigenous people given the over-representation of Indigenous people with mental health disorders and cognitive disabilities in the criminal justice system.[13]

The Law Society of NSW calls on all parties to commit to implementing the Law Reform Commission recommendation that section 32 be extended to the District Court.

10 New South Wales Law Reform Commission, Report 135: People with cognitive and mental health impairments in the criminal justice system: Diversion, 2012, pxvi.
11 New South Wales Law Reform Commission, Report 135: People with cognitive and mental health impairments in the criminal justice system: Diversion, 2012, Recommendation 13.2, pxxxiv.
12 Ibid, p277.
13 Baldry, E., McCausland, R., Dowse, L. and McEntyre, E., UNSW, A predictable and preventable path: Aboriginal people with mental and cognitive disabilities in the criminal justice system, 2015, p9.

Children

We recognise that positive work has been done over the last five years to reduce the number of young people in custody, in particular the number of young people on remand. However, there is more to be done.

The *Young Offenders Act 1997* (NSW) (Young Offenders Act) sets out a hierarchy of diversionary responses to young offending. Consistent with our previous advocacy, the Law Society would like to see legislative changes so the current restrictions on the sorts of crimes that can be dealt with under the Young Offenders Act are removed, and the scope of the Young Offenders Act broadened.

We further encourage government to take a holistic view of the factors pushing children and young people into contact with the juvenile justice system, and to direct proper funding of support services for young offenders that address underlying causes of offending.

We are alarmed by statistics from the most recent Young People in Custody Health Survey report (2015) which found that 83.3 per cent of young people in custody met the threshold for a psychological disorder. Increased funding is required for specialist forensic psychiatric hospitals to treat young people with mental health issues, particularly where mental health may be related to a young person's offending. Connected with this is the need for increased funding for age-appropriate alcohol and drug rehabilitation services. Where a young offender has a dual diagnosis of a mental health condition and a drug and/or alcohol dependence, there is a lack of "dual diagnosis" rehabilitation services available.

As mentioned, the majority of young people detained in juvenile justice detention centres have serious health, mental health and disability concerns. We note that many have also experienced abuse. The consequence of the interaction of these factors is that it is not uncommon for many young people entering the juvenile justice system to have fallen into homelessness. We support a homelessness strategy which directs funding to comprehensive mental health and intensive case management services for young homeless people.

We are also concerned about the cohort of homeless children – or otherwise without suitable accommodation – who are refused bail and are detained longer than they ordinarily would be in custody. Detention in these circumstances is of concern because it can lead to further criminalisation and increase the risk of offending. Increasing the supply of accommodation for homeless young people is another crucial policy response required by government, so young people can be diverted away from the criminal justice system.

The Law Society of NSW calls on all parties to commit to expanding the availability of the Young Offenders Act and rehabilitation and support services for young people.

Increasing the age of criminal responsibility

The Law Society notes that the Royal Commission into the Protection and Detention of Children in the Northern Territory recommended an increase in the age of criminal responsibility from 10 years to 12 years. The NSW Children's Court, the National Children's Commissioner and the Law Council of Australia also support an increase to 12 years. The United Nations Committee on the Rights of the Child has recommended that 12 years of age should be the minimum age, and supported minimum ages that are higher. The UN Committee has repeatedly criticised Australia for failing to reform the current minimum age of 10 years.

Raising the age of criminal responsibility should not be used to justify the removal of the doctrine of *doli incapax*, that is, the rebuttable presumption that a child up to the age of 14 does not possess the necessary knowledge to have criminal intention. The Law Society supports retaining *doli incapax* for children aged 13 and 14 years. Raising the minimum age and retaining *doli incapax* would work in a complementary way to protect the most vulnerable children.

Increasing the age of criminal responsibility more accurately reflects the modern understanding of brain development in children and would ensure that fewer children have contact with the court system.

The Law Society acknowledges that increasing the age of criminal responsibility requires support and services to respond to and address the criminogenic needs of younger children who engage in offending behavior. It is important that these younger children do not miss out on accessing services to respond to their developmental and welfare needs.

The Law Society also supports further consideration of whether the age of criminal responsibility should be raised beyond 12 to 14 years of age, based on thorough consideration of a child's development.

The Law Society of NSW calls on all parties to commit to increasing the age of criminal responsibility from 10 to at least 12 years.

Increasing access to education for children

The Law Society supports efforts to increase access to education for all children, particularly children in out-of-home care and Aboriginal and Torres Strait Islander children. We understand that alienation from school significantly escalates the risk of a young person or child disengaging from their community and makes them vulnerable to anti-social or criminal conduct. Education is a protective factor for children and allows them to maximise their full potential.

We are concerned that there are reportedly high numbers of children coming before the NSW Children's Court who are disengaged from formal education. We support funding for education liaison officers from the NSW Department of Education to be based at the NSW Children's Court to assist children coming before the court (both in the care and crime jurisdictions) to re-engage with education and training programs.

We note that the NSW Ombudsman inquired into behaviour management in schools in 2017 and found high rates of school suspensions for children with an out-of-home care history and for Aboriginal and Torres Strait Islander students. The inquiry noted the lack of evidence demonstrating that suspensions reduce disruptive classroom behaviour. Rather, research instead refers to the adverse consequences resulting from suspensions, including on a child's long-term health and wellbeing outcomes. We call for a review of the Department of Education policy and legislation surrounding disciplinary processes (particularly in relation to suspensions and expulsions).

We have become increasingly concerned by the lack of consistency and clarity in relation to how children accused of crimes interact and are dealt with by the Department of Education. We call for the establishment of a policy between education and the relevant agencies, including the police, and in consultation with the Law Society, which deals with child suspects.

The Law Society of NSW calls on all parties to commit to:

- funding education liaison officers at the NSW Children's' Court
- a review of disciplinary processes and policies regarding the questioning of children accused of criminal behaviour.

Protecting the rights of child defendants

Address the inappropriate application of domestic violence laws and policy to child defendants

It is widely accepted that children differ from adults in their physical and psychological development, as well as their emotional and educational needs. For child defendants involved in Apprehended Domestic Violence Orders involving adults there is a power imbalance, particularly where the complainants are the parents or carers. We submit that the child-carer relationship (particularly in the out-of-home care context) should be excluded from the definition of "domestic relationship" under *the Crimes (Domestic and Personal Violence) Act 2007* (NSW). We support the placement of restrictions on parents and carers making applications for obtaining ADVOs against their children.

We submit that the current restriction under the *Young Offenders Act 2007* (NSW) on dealing with domestic violence by children should be removed. Children accused of domestic violence should be afforded a range of diversionary options.

The Law Society of NSW calls on all parties to commit to providing a full range of diversionary options for children accused of domestic violence.

Reform the Criminal Records Act 1991 and spent convictions in relation to children

The principle that people should not be punished beyond their sentence is important, especially for children where rehabilitation is a paramount consideration. However, a conviction and a criminal record has far reaching effects on a child, long after their sentence.

Certain sexual offences can never be spent. We call for a review of spent convictions for children to allow for convictions to be spent, especially for sexting/consensual sexual offences, but also for offences by children generally. If a conviction and record can be avoided, the child's chance of rehabilitation will be greatly enhanced and allow them to reintegrate into the community where they can make positive contributions.

The Law Society of NSW calls on all parties to commit to reviewing the impact of spent convictions on children.

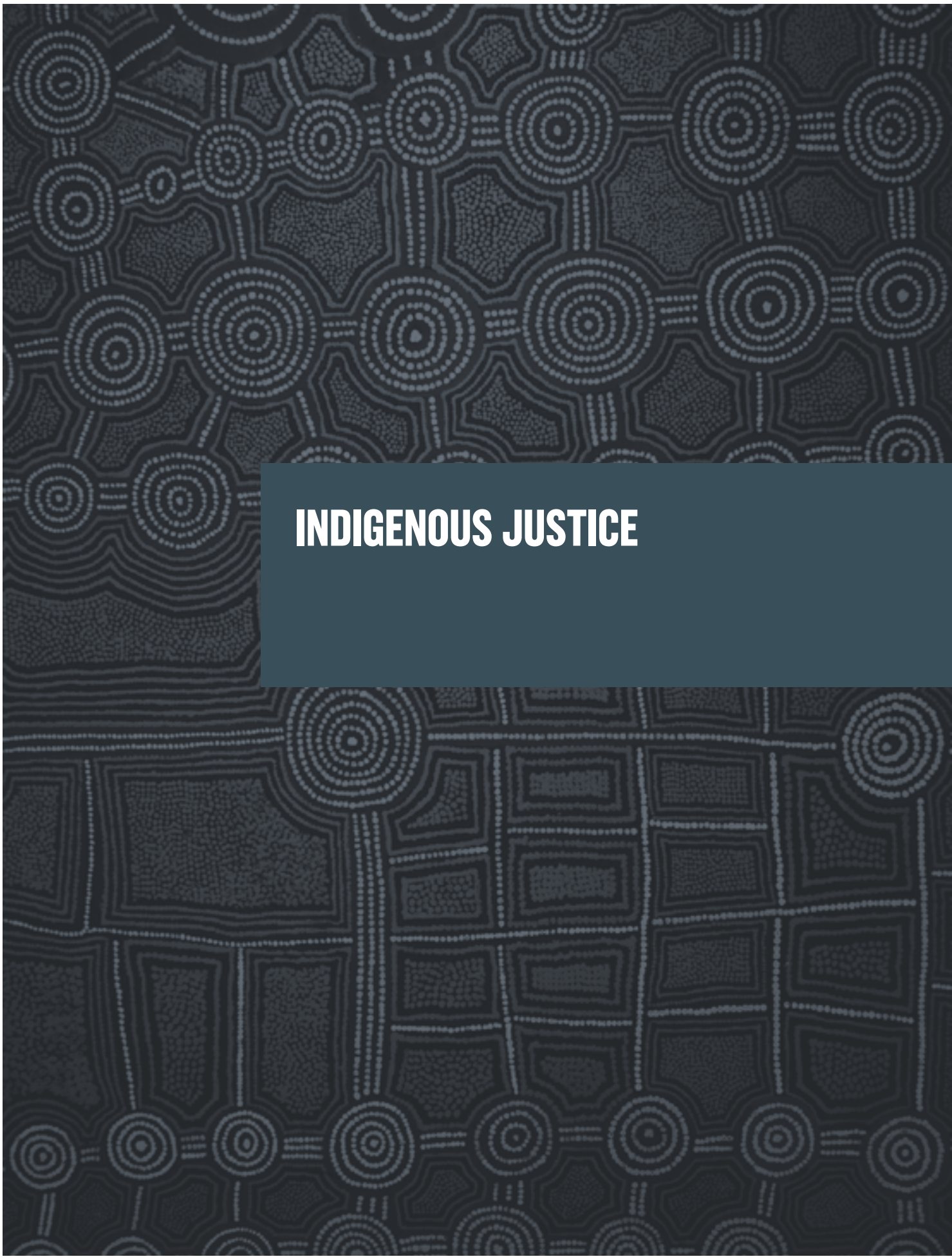
Ensuring children aged 16 and 17 appear in the Children's Court for traffic matters

Currently, section 28(2) of the *Children's (Criminal Proceedings) Act* (1987) (CCPA Act) provides that the Children's Court does not have jurisdiction to deal with a traffic offence committed by a child of licensable age, unless the offence arose out of the same circumstances as another offence that is alleged to have been committed by the person, and for which the Children's Court has jurisdiction.

The impact of this legislation is that children and young people aged 16 or 17 years who have committed a traffic offence are dealt with in the adult Local Court jurisdiction. The Law Society believes children should not be dealt with as adults for offences that can be dealt with by a court of summary jurisdiction. It is entirely appropriate, in accordance with our international obligations and the principle of proportionality that these children and young people appear before a specialist Children's Court, in a closed court setting.

The Children's Court has the same powers of disqualification as the Local Court. It is artificial to argue that a traffic matter is more serious or adult like than other offences, and should therefore be dealt with in the adult jurisdiction. The Children's Court regularly deals with 16 and 17 year olds who have committed offences of greater objective seriousness. It is not uncommon for 16 and 17 year olds who appear in the Local Court on traffic matters to be legally unrepresented. We believe Section 28(2) of the CCPA Act breaches our international human rights commitments which state that the best interests of a child in criminal matters should be a primary consideration, the child's privacy in closed court legal proceedings should be protected, children and young offenders have a right to legal representation, and there must be an emphasis on the wellbeing and rehabilitation of a child offender.

The Law Society of NSW calls on all parties to commit to ensuring children are dealt with by the Children's Court for traffic matters.



INDIGENOUS JUSTICE

Early intervention services and justice reinvestment strategies

Although there has been a reduction in the number of young people detained in juvenile justice detention centres, there continues to be an unjustifiable disparity between Indigenous and non-Indigenous young people. Indigenous young people make up 4 per cent of the youth population in NSW, but 51 per cent of the juvenile detention population. Three quarters of the Indigenous population have been cautioned by police, referred to a youth justice conference, or convicted of a criminal offence before they are 23 years old.

These alarming statistics require a dramatic and urgent response. A multi-pronged approach focused on early intervention is required, as is an approach which recognises the connections between Indigenous entry into the juvenile justice system and Indigenous overrepresentation in the care and protection system, and in the numbers of young people who fall away from the education system.

We support increased funding for Indigenous-specific services that support an early intervention and holistic approach to care and protection issues. Training and education focused on the unique issues Indigenous young people face is critical for those employed in law enforcement, care and protection, and education systems.

Policy development within the Education Department that prioritises strategies aimed at keeping Indigenous young people engaged and welcome in our schools is necessary. For example, adequate funding for Indigenous support workers in schools with a focus on the social, emotional and educational wellbeing of Indigenous children, and funding to provide Indigenous young people with practical support and resources that they may need on a day-to-day basis in schools.

Increased funding for justice reinvestment strategies, such as the Just Reinvest program in Bourke that recognises the importance of community led initiatives, is needed. The Maranguka Justice Reinvestment project has introduced specific "circuit breakers" through the Warrant Clinic and the Drivers Program that aim to keep young Indigenous people out of custody.

The Law Society of NSW calls on all parties to commit to focusing on early intervention for Indigenous young people.

Justice targets

It is useful for state governments to set justice targets, given state responsibility for the criminal justice system. This is particularly pertinent for NSW, given that in the last quarter of 2017 NSW held 3,253 Indigenous people in custody and on remand.

In Victoria, successive governments have committed to implementing the recommendations of the Royal Commission into Aboriginal Deaths in Custody and other measures to reduce Indigenous incarceration rates, including the long-term Aboriginal Justice Agreement, which requires public reporting on progress and is now in its third phase. We understand that evaluations have demonstrated that the Victorian Aboriginal Justice Agreement should be considered best practice in terms of success in providing for ongoing Aboriginal ownership of, and participation in, strategic policy development. We understand that the Victorian Aboriginal Justice Agreement meets the highest standards in terms of Indigenous participation, implementation, monitoring, and independent evaluation. Research has demonstrated that where states have Aboriginal Justice Agreements, Indigenous incarceration rates are below the national average.

The ALRC, in its report on Indigenous incarceration, recommends that Aboriginal Justice Agreements should be in place in states and territories [16-2].

The purpose of setting justice targets would be to set clear benchmarks for measuring the effectiveness of programs aimed at reducing the incarceration rate of Indigenous people. Further, improved data collection on the interaction between Aboriginal and Torres Strait Islander people and the justice system will assist with evidence-based policy making.

The Law Society of NSW calls on all parties to commit to enacting Indigenous justice targets aimed at reducing the incarceration rate of Indigenous people.

Care and protection targets

In 2016, Aboriginal and Torres Strait Islander children were 9.8 times more likely to be removed by child protection authorities than non-Indigenous children.[14] The number of removals is projected to triple by 2036 if no action is taken.[15] Rates of removal have worsened rather than improved since the publication of the *Bringing Them Home* report more than 20 years ago.[16] These statistics indicate the need for a targeted and coordinated strategy between Australian governments to address this growing issue.

We note the link between out-of-home care and involvement in the criminal justice system. Of the 99 Indigenous people who died in custody and were the subject of the Royal Commission into Aboriginal Deaths in Custody, 43 involved individuals who were separated from their families as children.[17]

More recently, the Royal Commission into the Protection and Detention of Children in the Northern Territory, as well as the recent ALRC Report into Indigenous Incarceration, specifically acknowledged the link between care and protection, juvenile detention and later adult incarceration.[18]

The Law Society of NSW calls on all parties to commit to enacting Indigenous care and protection targets aimed at reducing the removal of Indigenous children.

14 SNAICC – National Voice for our Children, the University of Melbourne, Griffith University, and Save the Children Australia, Family Matters Report 2017, 28, available online http://www.familymatters.org.au/wp-content/uploads/2017/11/Family-Matters-Report-2017.pdf

15 Ibid., at 9.

16 Ibid., at the release of Bringing Them Home in 1997, Aboriginal and Torres Strait Islander children represented 20% of children living in out-of-home care. Today they make up approximately 36%.

17 See https://www.humanrights.gov.au/timeline-history-separation-aboriginal-and-torres-strait-islander-children-their-families-text

18 The Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory noted research demonstrating the significantly increased risk of offending for children who have been in out-of-home care, both as juveniles and as adults. See Final Report, Volume 3B, Chapter 35, 7, available online: https://issuu.com/ntroyalcommission/docs/3b-final?e=31933818/55836170 The ALRC recommended that the Commonwealth Government should establish a national inquiry into child protection laws and processes affecting Indigenous children (recommendation 15-1).

Reducing Indigenous incarceration

The Law Society is greatly concerned by the over-representation of Indigenous people in the criminal justice system. While 24.2 per cent of the NSW adult prison population is Indigenous, only 2.9 per cent of the NSW adult population identifies as Indigenous.[19]

Over the last 15 years, the rate of Indigenous arrest for violent offences and property offences in NSW has declined by nearly 37 per cent and 33 per cent respectively. However, the decline in Indigenous arrest rates for violent and property crime has not been accompanied by a decrease in Indigenous imprisonment. Between 2001 and 2015, the number of Indigenous Australians in NSW prisons more than doubled which, according to the Bureau of Crime Statistics and Research (BOCSAR), is due to a combination of tougher sentencing and tougher law enforcement.[20]

It is accepted that the over-incarceration of Indigenous people contributes significantly to the continuing life expectancy gap between Indigenous people and other Australians. Research indicates that the high rates of repeated short-term incarceration experienced by Aboriginal people in Australia have a multitude of negative health effects for Aboriginal communities and the wider society, while achieving little in terms of increased community safety.[21] Further, the incarceration of Indigenous adults affects not only the individuals involved, but also their families and communities, including by potentially placing Indigenous children at risk of engagement with the care and protection jurisdiction.

We note the increasing number of Indigenous women in prison. It is estimated that 80 per cent of Aboriginal and Torres Strait Islander prisoners are mothers,[22] and that the incarceration of Aboriginal and Torres Strait Islander women is a key driver in the removal of Aboriginal and Torres Strait Islander children.

Innovative solutions are needed to address the underlying causes of Indigenous offending.

Consistent with the recommendations of the ALRC's *Pathways to Justice* report, the Law Society supports specialised Indigenous courts. Indigenous offenders make up consistently one third of the sentencing work of the District Court of NSW, and a specialised court in that jurisdiction can impact upon a very marked proportion of those offenders.

Such a court should adopt features of the NSW Drug Court. There is evidence to suggest the proposal could impact Aboriginal offending rates. For example, the Bureau of Crime Statistics and Research and the Centre for Health Economics Research and Evaluation conducted an evaluation of the NSW Drug Court in 2008, which demonstrated that the Drug Court was more cost-effective than conventional sanctions, as well as more effective in reducing recidivism.

In addition to what the Law Society considers sound fiscal reasons, the Law Society's support for specialist Indigenous courts is underpinned by evidence that there are significant benefits to returning some level of ownership and community engagement of this aspect of the justice system to Indigenous communities.

In addition to support from legal stakeholders, the Law Society of NSW notes that the Police Association of NSW also supports a specialised Indigenous court.

The Law Society also supports the expansion of the Koori Court throughout NSW. Currently,

19 Australian Bureau of Statistics, Estimates of Aboriginal and Torres Strait Islander Australians, June 2011. http://www.abs.gov.au/ausstats/abs@.nsf/mf/3238.0.55.001
20 See https://www.bocsar.nsw.gov.au/Pages/bocsar_media_releases/2016/mr-Indigenous-crime-and-imprisonment.aspx.
21 See for example AS Krieg, "Aboriginal incarceration: health and social impacts," (2006) Med J Aust. 184(10), 534-6
22 Overrepresented and Overlooked: the crisis of Aboriginal and Torres Strait Islander women's growing over-imprisonment, 5 https://static1.squarespace.com/static/580025f66b8f5b2dabbe4291/t/59378aa91e5b6cbaaa281d22/1496812234196/OverRepresented_online.pdf

the Koori Court is operating in Parramatta and has recently been extended to the Surry Hills Children's Court. The Koori Court increases Aboriginal involvement in the delivery of justice, ensuring outcomes are culturally relevant. The University of Western Sydney released a study of the Parramatta pilot program that found the program addressed underlying issues such as unstable accommodation, problems with education and employment, and the experience of disconnection from culture. Further, the number of days young Indigenous people participating in the program spent in detention were reduced.

The Law Society of NSW calls on all parties to commit to the establishment and expansion of specialist Indigenous courts, as well as an improved funding model for the Aboriginal Legal Service.

Meaningful engagement with Aboriginal peoples in NSW

The Law Society considers it significant that Indigenous delegates from all around Australia again identified as a consensus view in the Uluru Statement from the Heart, the importance of Makarrata (or treaty) to capture "our aspirations for a fair and truthful relationship with the people of Australia and a better future for our children based on justice and self-determination".[23]

The Law Society supports the call for a discussion about Makarrata to provide a framework for the relationship between the NSW State Government and Aboriginal peoples. NSW is home to the highest number of Aboriginal people in the country. We are of the view that these discussions are important in the context of facilitating the economic development of Aboriginal peoples.

The Law Society notes that other states and territories are further progressed on their way to treaty negotiations. Victoria has passed legislation creating the framework for a treaty process; the Northern Territory has negotiated an MOU with four land councils; and Western Australia has announced that it would begin a two-year consultation process to create an Independent Office for Aboriginal People, intended to create a state-based body comparable to the proposed Commonwealth Voice to Parliament.

The Law Society of NSW calls on all parties to commit to a discussion of treaty issues.

23 Uluru Statement from the Heart, available online: https://www.referendumcouncil.org.au/sites/default/files/2017-05/Uluru_Statement_From_The_Heart_0.PDF

Empowerment of Aboriginal and Torres Strait Islander people in NSW

In the absence of a formal treaty framework, the Law Society's view is that respecting the principle of self-determination and its manifestation in practice by empowering communities and individuals is critical. Governments must work in true partnership with Aboriginal communities at a local level on the issues that affect Indigenous peoples.

One key measure of a government's commitment to community empowerment is assessing how service delivery to Aboriginal communities is designed and funded. Funding of service delivery to Aboriginal communities should prioritise partnerships with local Aboriginal leadership and should prioritise funding of Aboriginal-controlled community organisations that may already be providing local solutions to local issues.

We note again the findings of the NSW Ombudsman on the issue of effective funding models for Aboriginal organisations in the Ombudsman's Special Report to Parliament, *Addressing Aboriginal disadvantage: the need to do things differently*[24]. The report's findings were informed by extensive consultation with thousands of Aboriginal people, as well as hundreds of agencies and organisations responsible for service provision. The report is also supported by a decade of work by the Ombudsman on these issues.[25]

In the Law Society's view, the report supports a transparent funding model underpinned by the principle of self-determination, and which establishes true partnerships. The report noted that in NSW substantial government investments have "yielded dismally poor returns to date"[26] and that in order to change this, the reform process must make Aboriginal affairs core business for all agencies, where change is driven from the centre of government. Further, the reform process must involve a true partnership between government and Aboriginal leaders.

The report also noted that government must work with Aboriginal leaders in developing strategies to facilitate greater participation by Aboriginal people in successful economic endeavours.[27]

The Law Society of NSW calls on all parties to commit to prioritising partnerships with local Aboriginal leadership and a funding model underpinned by the principle of self-determination.

24 NSW Ombudsman, Addressing Aboriginal disadvantage: the need to do things differently, A Special Report to Parliament under s 31 of the Ombudsman Act 1974, October 2011, available online: https://www.ombo.nsw.gov.au/__data/assets/pdf_file/0012/3342/SR_Aboriginal-disadvantage-report.pdf
25 Ibid., at 2.
26 Ibid., at 5.
27 Ibid.

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