



THE LAW SOCIETY
OF NEW SOUTH WALES

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21 May 2020

Ms Margery Nicoll
Acting Chief Executive Officer
Law Council of Australia
DX 5719 Canberra

By email: Nathan.MacDonald@lawcouncil.asn.au

Dear Ms Nicoll,

Senate Select Committee on COVID-19

Thank you for the opportunity to contribute to the Law Council's submission to the Senate Select Committee on COVID-19 ("the Select Committee").

The Law Society's Human Rights Committee, Diversity and Inclusion Committee and Indigenous Issues Committee have contributed to this submission. Our submission addresses some of the topics outlined in the Law Council's memorandum of 1 May 2020.

We note that further opportunities to provide submissions on this issue are anticipated to arise as the work of the Select Committee progress. We would welcome the opportunity to contribute to any future submissions.

By way of preliminary comment, we note that the Australian Government's response to the COVID-19 pandemic was made in unprecedented circumstances and in the context of a global crisis which saw profound changes on an almost daily basis. Our comments below should be viewed in that context.

1. The adequacy of the Australian Government's measures towards protecting and upholding the human rights of vulnerable communities

Support for victims of domestic violence

Reports suggest that there has been a significant increase in domestic and family violence since the beginning of the COVID-19 pandemic. In March 2020, referrals through the NSW Government's Safer Pathways program for victims of domestic violence were up 10 per cent compared to the same period in 2019.¹ Across Australia, other states have recorded similar spikes in domestic violence reporting during the pandemic² and the same trend is present

¹ Lucy Cormack, 'Domestic violence victims seeking help rises 10 per cent after COVID-19 lockdown', *The Sydney Morning Herald* (online), 1 May 2020 <<https://www.smh.com.au/national/nsw/domestic-violence-victims-seeking-help-rises-10-per-cent-after-covid-19-lockdown-20200501-p540xt.html>>.

² Ruchika Talwar, 'Coronavirus lockdown: Domestic violence complaints in Australia rise even as reports by phone fall', *SBS News* (online), 17 April 2020 <<https://www.sbs.com.au/language/english/audio/coronavirus-lockdown-domestic-violence-complaints-in-australia-rise-even-as-reports-by-phone-fall>>; Kate Hedley, 'Huge spike in family

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internationally.³ The Law Society therefore welcomes the announcement of targeted funding from the Federal Government to support Australians experiencing domestic, family and sexual violence as a result of COVID-19 related containment measures.⁴

Accessibility and inclusion for all communities

The circumstances surrounding the COVID-19 pandemic have required the Australian Government to reduce regulatory requirements and adopt flexible practices across a range of settings: for example, conducting remote hearings in federal courts and tribunals, expanding Medicare telehealth services, and providing access to government services, such as Centrelink, without the need for contact meetings. The Law Society understands that such arrangements have provided greater accessibility and inclusion for groups who may otherwise experience accessibility challenges, such as people with disability, the aged, and those living in regional, rural and remote areas. The Law Society supports initiatives that promote accessibility and inclusion for all groups and recommends that the Australian Government consider maintaining suitable flexible arrangements into the future post the COVID-19 pandemic.

We understand, however, that as working and accessing some services remotely has become essential during the COVID-19 pandemic, existing telephone and internet connectivity issues in regional, rural and remote communities have become critical.

The ABS Census (2016) results indicate that the digital divide disproportionately impacts regional NSW and areas with high Aboriginal populations. It also shows how internet access differs *within* local government areas (LGAs). Below, by way of example, are internet usage statistics relevant to LGAs in NSW where there are high Aboriginal populations, compared to Woollahra LGA (an urban LGA) and to the NSW average. These figures, provided by Just Reinvest NSW, were extracted from ABS 2016 census results.

Location	% not accessing internet from home
Moree LGA	28.4%
Boggabilla (suburb in the Moree LGA)	44.2%
Bourke LGA	31.8%
Willmot (Mt Druitt – suburb within Blacktown LGA)	25.2%
Lethbridge Park (Mt Druitt – suburb within Blacktown LGA)	27.4%
Blacktown LGA	12.3%
Woollahra LGA (comparator)	6.4%
NSW	14.7%

The digital divide and the risks of negative education implications has been accentuated with the rapid shift to online learning in response to COVID-19 containment measures. A recent report has stated the problem well: "...if digital exclusion disrupts the education of students in

violence in WA could be the 'tip of the iceberg': McGurk', *WA Today* (online), 12 May 2020 <<https://www.watoday.com.au/national/western-australia/huge-spike-in-family-violence-in-wa-could-be-the-tip-of-the-iceberg-mcgurk-20200512-p54s4l.html> />; Sumeyya Ilanbey and Simone Fox Koob, "Closed doors won't protect you': Police ramp up response to family violence", *The Age* (online), 21 April 2020 <<https://www.theage.com.au/national/victoria/closed-doors-won-t-protect-you-police-ramp-up-response-to-family-violence-20200421-p54lqx.html>>.

³ Andrew M. Campbell, 'An increasing risk of family violence during the COVID-19 pandemic: Strengthening community collaborations to save lives' (2020) 2 *Forensic Science International: Reports*.

⁴ Prime Minister of Australia, '\$1.1 billion to support more mental health, Medicare and domestic violence services' (Media release, 29 March 2020) <<https://www.pm.gov.au/media/11-billion-support-more-mental-health-medicare-and-domestic-violence-services-0>>.

low socio-economic households during the COVID-19 crisis they are less likely to return to a successful educational pathway”.⁵

Education is widely recognised as one of the most important protective factors that will help keep young people out of the youth and adult criminal justice systems. Bridging the digital divide, both in physical access to technology and the resources and skills needed to accrue benefits from use, has the potential to support far-reaching change in communities, including in education, youth justice, social inclusion, economic participation and access to information.

We submit that that the Australian Government should invest in adequate technology and increased resourcing for internet reliability to ensure these communities have equal access to and opportunities for education and participation, particularly if the current flexible arrangements are maintained into the future post COVID-19.

2. The extent to which the Australian Government has responded to concerns regarding the welfare of persons in immigration detention

Advice issued by the Commonwealth Government Department of Health states that “people in correctional and detention facilities” are among the groups most at risk of contracting COVID-19.⁶ Australia’s Human Rights Commissioner, Edward Santow, has voiced concern about the risk for people in immigration detention facilities, given that “detainees typically share small rooms with strangers, making social distancing almost impossible in immigration detention facilities”.⁷ The Australasian Society for Infectious Diseases (ASID) has similarly noted that the crowded conditions in immigration detention “would potentially pose a risk to their health in the event of an outbreak of COVID-19”, and urged the Commonwealth Government to consider the release of detainees into suitable housing in the community if they do not pose a significant security or health risk.⁸ As a minimum standard, the ASID recommended that detainees be held in single rooms with their own bathroom facilities.

The Law Society shares the concerns about the risks to people in immigration detention centres, given COVID-19 is still present in Australia. We further note that while the Commonwealth Government Department of Home Affairs has introduced a number of measures in detention centres in response to COVID-19 – including closing the immigration detention visitor program, asking legal representatives to communicate via phone or Skype, and restricting excursions – these responses do not address the issue of overcrowding.⁹ We therefore encourage the Commonwealth Government to consider measures that will reduce overcrowding in detention centres during the COVID-19 pandemic. In this regard, we note that other countries, including the United Kingdom, Belgium, and Spain, have significantly reduced the number of people held in immigration detention out of concerns over potential COVID-19 outbreaks.¹⁰

⁵ Kate Noble, ‘COVID-19 school closures will increase inequality unless urgent action closes the digital divide’ *Mitchell Institute, Victoria University*, 3 April 2020, <<http://www.mitchellinstitute.org.au/opinion/covid19-digital-divide/>>

⁶ Australian Government Department of Health, *What you need to know about coronavirus (COVID-19)* (accessed 18 May 2020) <<https://www.health.gov.au/news/health-alerts/novel-coronavirus-2019-ncov-health-alert/what-you-need-to-know-about-coronavirus-covid-19#who-is-most-at-risk>>.

⁷ Edward Santow, ‘We must combat COVID-19 but creeping authoritarianism could do more harm than good’, *The Guardian* (online), 8 April 2020 <<https://www.theguardian.com/commentisfree/2020/apr/08/we-must-combat-covid-19-but-creeping-authoritarianism-could-do-more-harm-than-good>>.

⁸ Open letter from the Australasian Society for Infectious Diseases and the Australian College of Infection Prevention and Control, 19 March 2020 <<https://www.asid.net.au/documents/item/1868>>.

⁹ Australian Government Department of Home Affairs, *COVID-19 and the border: Immigration detention* (accessed 18 May 2020) <<https://covid19.homeaffairs.gov.au/immigration-detention>>.

¹⁰ Ben Doherty, ‘Refugee brings court case over threat of COVID-19 in Australian detention’, *The Guardian* (online), 22 April 2020 <<https://www.theguardian.com/australia-news/2020/apr/22/sick-refugee-at-risk-of-covid-19-launches-high-court-bid-for-release-from-australian-immigration-detention>>.

Should you have any questions or require further information about this submission, please contact Andrew Small, Policy Lawyer, on Andrew.Small@lawsociety.com.au or (02) 9926 0252.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'R Harvey', with a stylized flourish underneath.

Richard Harvey
President