



THE LAW SOCIETY
OF NEW SOUTH WALES

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9 January 2026

Dr James Popple
Chief Executive Officer
Law Council of Australia

By email: brendon.murphy@lawcouncil.au; john.farrell@lawcouncil.au

Dear Dr Popple,

PRE-BUDGET SUBMISSION 2026-27

Thank you for the opportunity to contribute to the Law Council's submission in respect of pre-budget submissions for the 2026-27 budget. Please see below matters the Law Society has identified as funding priorities.

1. Proposed Higher Education Loan Program debt relief scheme for legal practitioners in rural, regional and remote locations

Issue: The Law Society supports initiatives to incentivise recruitment and retention of lawyers in rural, regional and remote (**RRR**) areas. As noted in our previous correspondence to the Law Council, we support the introduction of a Higher Education Loan Program (**HELP**) debt reduction and indexation relief scheme for legal practitioners who live and work in RRR locations, as well as a broader program of improved investment in infrastructure and services to increase the liveability of RRR Australia.

Submission: We support the Law Council's proposed HELP debt relief and indexation relief scheme, and suggest the Government provide appropriate budgetary support for the scheme.

2. Increased funding for the legal assistance sector

Issue: The Independent Review of the National Legal Assistance Partnership (**NLAP**) identified systemic and widespread failings with the current arrangements under the NLAP that have serious consequences for some of the most vulnerable in our community requiring legal assistance. It was noted that "there is significant unmet legal need in Australia, and that funding from all sources is inadequate to address the legal needs of those people the legal assistance sector is meant to support."¹ While the Government has commenced a new National Access to Justice Partnership (**NAJP**) from 1 July 2025, we understand from our legal assistance sector members, particularly members who provide services through Aboriginal and Torres Strait Islander legal services, that the level of funding to be provided under the new NAJP is not sufficient to meet existing levels of legal need, nor the requirements of the National Agreement on Closing the Gap.

¹ Independent review of the National Legal Assistance Partnership 2020-25 Final Report, 230: <https://www.ag.gov.au/sites/default/files/2024-06/NLAP-review-report.PDF>.

Additionally, the National Legal Aid's Private Practice Census 2024 Report² (**NLA Report**) indicates that, under the current funding arrangements, a significant number of the private practitioners currently providing legal aid have indicated that they will soon no longer be able to do so. Critically, 12% of the NSW survey respondents indicated that they plan to discontinue providing legal aid services in the following 12 months. A further 20% said they were "not sure" whether they would continue. Barriers to legal aid work identified by all respondents included having to perform unremunerated work (85%), increase in time needed to engage with legal aid clients (83%), growth in the level of support required to engage with legal aid clients (65%), and the need to travel over 200km one way to deliver legal aid (38%).

Given that private practitioners deliver 72% of the over 150,000 legal aid grants every year,³ we are greatly concerned about the continued viability of the legal aid sector. The implications of such an exodus of private practitioners from legally aided work are far-reaching. Should 20% of private practitioners decline to undertake legally aided matters, the Law Society is concerned that regional and rural areas already experiencing a shortage of panel lawyers will be most severely impacted. We emphasise that there is an existing critical shortage of care and protection lawyers across NSW, with some regions only being serviced by one or a handful of private care and protection lawyers accepting grants of legal aid. If funding is not urgently increased, access to justice will be significantly reduced, with a disproportionate impact on disadvantaged cohorts requiring legal aid, such as women and children experiencing domestic violence and First Nations peoples.⁴

Submission: We suggest the Government, in coordination with States and Territories, ensure that funding for the legal assistance sector under the NAJP is sufficient to meet existing legal need, and is appropriately indexed to meet future levels of legal need.

3. Resourcing of the Office of the Australian Information Commissioner (OAIC) and privacy reform

Issue: Strong privacy laws and protections are critical to building public trust and confidence in the digital economy. The Government began the review into the *Privacy Act 1988* (Cth) (**Privacy Act**) in 2020. The Attorney-General Department's Privacy Act Review Report contained 116 proposals that aim to make the Privacy Act fit-for-purpose to protect privacy in the digital age.⁵ In the Government Response to the Privacy Act Review Report (**Government Response**), the Government agrees with 38 proposals, agrees-in-principle with a further 68, and notes the remaining 10.⁶

The Privacy and Other Legislation Amendment Bill 2024 (**Privacy Bill**), passed on 29 November 2024, implemented the first tranche of reforms to the Privacy Act, which provides for 23 of the proposals agreed to by the Government, including new powers for the OAIC to develop a Children's Online Privacy Code. The

² Natasha Cortis and Megan Blaxland, [Legal Aid Private Practitioners Report](#) (UNSW Social Policy Research Centre, 5 February 2025).

³ Emily Millane, Angela Jackson and Nathan Blane, [Justice on the Brink: Stronger Legal Aid for a Better Legal System](#) (Impact Economics and Policy, November 2023).

⁴ *Ibid* 4.

⁵ Australian Government (Attorney General's Department), 'Privacy Act Review Report' (16 February 2023): <https://www.ag.gov.au/rights-and-protections/publications/privacy-act-review-report>.

⁶ Australian Government (Attorney General's Department), 'Government Response: Privacy Act Review Report' (9 May 2023): <https://www.ag.gov.au/sites/default/files/2023-09/government-response-privacy-act-review-report.PDF>.

former Attorney-General announced in the Second Reading Speech that there will be consultation on a second tranche of reforms.

Further, the commencement of obligations for tranche 2 entities under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) (**AML/CTF Act**) from 1 July 2026 may increase the number of entities reporting to the OAIC. This is because entities not already captured under the Privacy Act will now need to comply with the Privacy Act as a reporting entity providing designated services under the AML/CTF Act.

Submission: We suggest the Government provide additional funding for the OAIC, including delineating the functions of the Privacy Commissioner and the Information Commissioner respectively so that each may drive enforcement in privacy and Freedom of Information. We also suggest that the Government sufficiently resource the timely and effective implementation of the remaining recommendations from the Privacy Act Review Report.

4. Resourcing of the Fair Work Commission (FWC)

Issue: The *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (Cth), *Fair Work Legislation Amendment (Closing Loopholes) Act 2023* (Cth) and *Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024* (Cth) expanded several of the FWC's functions relating to workplace bargaining, enterprise agreements, workplace sexual harassment, and disputes about flexible work arrangements, extensions of unpaid parental leave, unfair contract terms, casual employment, and the right to disconnect. The legislation also conferred obligations on the FWC to establish expert panels relating to the care and community sector and gender pay equity, and to absorb the functions of the Registered Organisations Commission.

The Fair Work Commission's 2024-25 Annual Report disclosed that, in 2024-25, the Commission received 44,075 lodgements in total, an increase of 24% above the five-year average.⁷ The increase in lodgements is substantially driven by increases in the two largest case types, unfair dismissal applications and general protections dismissal applications.⁸

Additionally, we suggest resourcing is required to further modernise the FWC's remote conferencing facilities. We note that, even after a recent facilities upgrade, staff-led conciliations are limited to audio conferencing. Our members report that, in the majority of cases, the use of video conferencing is extremely valuable in facilitating early dispute resolution. We suggest that video conferencing should be the default medium for all remote conferencing, while allowing the parties to agree to revert to audio in appropriate matters, such as where trauma is involved.

Submission: We suggest the Government allocate appropriate funding to ensure the FWC is sufficiently resourced to implement the workplace reform agenda and increased lodgements, and to support dispute resolution through remote conferencing.

⁷ Fair Work Commission President's statement (12 November 2025) 1:

<https://www.fwc.gov.au/documents/consultation/presidents-statement-gp-changes-2025-11-12.pdf>.

⁸ Fair Work Commission Annual Report 2024-25, 26: <https://www.fwc.gov.au/documents/reporting/fwc-annual-report-2024-25.pdf>.

5. Federal Circuit and Family Court of Australia (FCFCOA) information resources

Issue: We understand the FCFCOA is undertaking to produce key information resources in a number of community languages. The provision of key information and materials such as Practice Directions in all major community languages, using trauma informed, culturally appropriate language, is a significant access to justice issue, particularly for self-represented litigants in the family law jurisdiction.

Submission: The Law Society suggests the Government allocate resources to expand the FCFCOA translation project to ensure all key information resources and forms are available in community languages.

6. Federal Judicial Commission

Issue: The Law Society continues to support the establishment of an appropriately constituted and properly resourced federal judicial commission. We continue to support the NSW model, and note again our support for the establishment of one body that combines the functions of a federal judicial commission with the professional development and other functions of the National Judicial College of Australia.

Submission: We suggest the Government provide an appropriate level of resourcing to continue to undertake the development and establishment of a federal judicial commission, to ensure its effectiveness as an important part of the developing integrity landscape at the Commonwealth level.

7. Whistleblower support and protection

Issue: The Law Society notes that the Government recently conducted a consultation on the exposure draft of the Public Interest Disclosure and Other Legislation Amendment (Whistleblower Protections) Bill 2025. The Law Society supports promoting the integrity and accountability of the Commonwealth public sector and ensuring that legal protections for whistleblowers are appropriately robust, as noted in our submission dated 23 September 2025.

Submission: We note the importance of appropriate resourcing for the Office of the Commonwealth Ombudsman, if a Whistleblower Ombudsman is established. In the meantime, we suggest the Government consider the provision of resourcing to fund legal assistance for whistleblowers.

8. Optional Protocol to the Convention Against Torture (OPCAT) implementation in Australia

Issue: Implementation of the OPCAT in Australia continues to be an issue of contention and concern. We note that “[t]he Commonwealth Government has elected to adopt a multiple-body monitoring system with the Commonwealth, States and Territories asked to designate their own [National Prevention Mechanisms] NPM(s) within their relevant jurisdictions.”⁹ Despite the ratification of OPCAT four years ago, a number of states, including NSW, have not yet designated an NPM.

We note that the Australian Human Rights Commission has recommended that “Governments resource NPMs sufficiently to allow them to effectively fulfil their OPCAT functions, including the outward-facing functions

⁹ Australian Human Rights Commission, *Road Map to OPCAT Compliance*, 17 October 2022, 3 online: https://humanrights.gov.au/sites/default/files/opcat_road_map_0.pdf.

contained in the preventive package.” However, we understand that a key obstacle for a number of States and Territories, including NSW, to progressing this issue is a continued lack of an intergovernmental agreement on funding.¹⁰

Submission: We suggest the Government work with States and Territories to agree to funding arrangements in order to designate effective NPMs, consistent with Australia’s OPCAT obligations, and provide additional resourcing as agreed.

9. National leadership on child justice system reform

Issue: Child justice policy responses across Australia are inconsistent and not compliant with Australia’s obligations under international law. In 2024, the National Children’s Commissioner reported that Australia’s responses to child justice have been piecemeal, uncoordinated and inadequate, and that current approaches to offending by children have been ineffective and not supported by evidence. The Commissioner instead called for a nationally co-ordinated, child rights-based approach to reform.¹¹

Submission: The Law Society suggests the Government allocate funding to facilitate the implementation of recommendations made in the Australian Human Rights Commission ‘*Help way earlier!*’ report. Recommendations include the Australian government funding diversionary programs for children, including those by Aboriginal and Torres Strait Islander Community-Controlled Organisations, prioritising access to safe and affordable housing, funding integrated social services for children and families, and investing in restorative justice conferencing to be available across Australia.

10. Implementation of the National Plan to End Violence against Women and Children 2022-2032

Issue: The National Plan to End Violence against Women and Children 2022-2032 (**National Plan**) is a key joint Australian, State and Territory government response to the widespread problem of domestic and family violence, which spans geographic, socio-economic and cultural sectors of Australian society. The National Plan outlines a multi-pronged approach, with initiatives and services focused on prevention, early intervention, response, and recovery and healing for victims.¹²

¹⁰ The Hon. Mark Speakman. Budget Estimates 2021 Questions Taken on Notice Portfolio Committee No. 5 – Legal Affairs (26 March 2021), Question 14, 35; The Hon. Elise Archer. House of Assembly Estimates Committee B. (8 September 2021), 25; Jack Latimore. “Deaths in custody oversight missing as government deadline passes.” The Sydney Morning Herald (20 January 2022); Parliament of Victoria Legislative Council Legal and Social Issues Committee. Inquiry into Victoria’s criminal justice system Volume 2 (March 2022), 630; The Hon. Leanne Linnard. Queensland Parliament. Record of Proceedings (26 May 2022), 1479.

¹¹ Australian Human Rights Commission, ‘*Help way earlier!*’: *How Australia can transform child justice to improve safety and wellbeing* (Report, 2024) 9: <https://humanrights.gov.au/our-work/childrens-rights/publications/help-way-earlier>.

¹² Australian Government (Department of Social Services), *The National Plan to End Violence against Women and Children 2022-2032*, p. 20, https://www.dss.gov.au/sites/default/files/documents/10_2023/national-plan-end-violence-against-women-and-children-2022-2032.pdf.

The First Action Plan 2023-2027 under the National Plan (**First Action Plan**) commits to increasing and strengthening the capability of mainstream and specialist workforces to deliver quality services, activities and programs across these four domains.¹³

The National Plan specifically seeks to address the disproportionate rates of violence experienced by Aboriginal and Torres Strait Islander women and children, in alignment with Target 13 of the National Agreement on Closing the Gap. The First Action Plan commits to working in partnership with Aboriginal and Torres Strait Islander communities to ensure policies and services are culturally competent, strengths-based, trauma-informed, and meet the needs of these communities.¹⁴ Additionally, the Aboriginal and Torres Strait Islander Action Plan 2023-2025 (**Aboriginal and Torres Strait Islander Action Plan**) commits to undertaking initiatives and services across the four domains outlined in the National Plan through five reform areas: voice, self-determination and agency; strength, reliance and therapeutic healing; reform of institutions and systems; evidence and data; and inclusion and intersectionality.¹⁵

Submission: We suggest the Government include in the budget, funding for the measures recommended in the National Plan, First Action Plan and Aboriginal and Torres Strait Islander Action Plan. This includes sustained funding for appropriately targeted specialist legal assistance services, as well as for social and economic measures, including:

- increased funding for community legal centres and specialist legal services, such as Women's Legal Services and Aboriginal Legal Services to provide advice and representation in domestic and family violence matters;
- community education programs to address the cultural norms of gender inequality as the foundation of violence against women and their children; and
- integrated programs and services in respect of areas such as police services, school and university based services, crisis health and accommodation services, financial assistance services, and perpetrator behaviour change programs, as well as the expansion of integrated legal services for victim-survivors of sexual assault.

11. Disability funding and the justice system

Issue: The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability noted in its Final Report that the data it received on the proportion of Aboriginal and Torres Strait Islander people with cognitive disability in custody, particularly in youth detention, exposes "a hidden national crisis"¹⁶ and called for the need for care and support from Aboriginal Community Controlled Organisations to prevent people with disability entering the criminal justice system.

¹³ Australian Government (Department of Social Services), *First Action Plan 2023-2027 under the National Plan to End Violence against Women and Children 2022-2032*, pp. 13, 30,

https://www.dss.gov.au/sites/default/files/documents/12_2023/d23-1021308-first-action-plan-accessible-pdf.pdf.

¹⁴ *Ibid.*, pp. 13, 46.

¹⁵ Australian Government (Department of Social Services), *Aboriginal and Torres Strait Islander Action Plan 2023-2025 under the National Plan to End Violence against Women and Children 2022-2032*, p. 46,

https://www.dss.gov.au/sites/default/files/documents/10_2023/dedicated-action-plan.pdf.

¹⁶ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability: *Final Report, Volume 8, Criminal Justice and People with Disability*, 4, online: Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability: Final Report, online: <https://disability.royalcommission.gov.au/system/files/2023-09/Final%20Report%20-%20Volume%208%2C%20Criminal%20justice%20and%20people%20with%20disability.pdf>.

We understand that the National Aboriginal and Torres Strait Islander Legal Services (**NATSILS**) made a recommendation to the Independent Review of the National Legal Assistance Program in its 2023 submission that:

As an urgent priority and recognising the significant number of Aboriginal and Torres Strait Islander people with disability in justice systems, the Commonwealth, State and Territory governments work in partnership with NATSILS, [Aboriginal and Torres Strait Islander Legal Services (ATSILS)] and the First Peoples Disability Network to develop an Aboriginal and Torres Strait Islander Disability Framework and operational plan which would co-locate disability advocates within NATSILS, ATSILSs and First People's Disability Network.¹⁷

Submission: We suggest that the Government properly resource the timely and effective implementation of the recommendations of this Royal Commission and particularly suggest the Government provide funding to facilitate the development of an Aboriginal and Torres Strait Islander Disability Framework and operational plan.

12. Native Title representative bodies (NTRBs)

Issue: Our members advise that, unlike owners of freehold land, there remain significant barriers for native title holders to activate their assets. NTRBs are organisations appointed under the *Native Title Act 1993* (Cth) (**NTA**), which face perpetual, mandatory regulatory costs in meeting their statutory obligations, given that native title rights are inalienable (cannot be sold, and are perpetual). NTRBs prepare native title applications and assist native title interest holders in proceedings concerning native title applications, future acts, Indigenous land use agreements, rights of access conferred under the NTA and any other matters relating to native title or the operation of the NTA.¹⁸ NTRBs are also required to perform certification,¹⁹ dispute resolution,²⁰ notification,²¹ agreement making²² and internal review functions²³ under the NTA. There continues to be a gross lack of funding for NTRBs which are subject to significant regulatory burdens.²⁴ In the absence of adequate funding, the timeliness of native title claims is affected, which may, in turn, affect the ability of native title claimants to take certain opportunities in respect of their claim.

Submission: We suggest that the Government provide further and sustainable funding to NTRBs, to ensure that they are able to fulfill their functions under the NTA.

¹⁷ NATSILS, *Submission to the Independent Review of the National Legal Assistance Partnership 2020-25*, recommendation 17, 10, online here: <https://nlapreview.com.au/uploads/media/NATSILSSubmissiontotheNLAPReviewFinalpublic-1701063679.pdf>.

¹⁸ *Native Title Act 1993* (Cth) s 203BB.

¹⁹ *Ibid* s 203BE.

²⁰ *Ibid* s 203BF.

²¹ *Ibid* s 203BG.

²² *Ibid* s 203BH.

²³ *Ibid* s 203BI.

²⁴ See Law Society of NSW, 'Inquiry into economic self-determination and opportunities for First Nations Australians' (20 May 2024) <[Letter to Law Council of Australia - Inquiry into economic self-determination and opportunities for First Nations Australians - 20 May 2024.pdf](#)>.



13. Cultural heritage reforms

Issue: The destruction of Juukan Gorge rock shelters in May 2020 caused immeasurable cultural loss and prompted re-examination of cultural heritage protection legislation, culminating in an inquiry by the Joint Standing Committee on Northern Australia and its final report, *A Way Forward - Final report into the destruction of Indigenous heritage sites at Juukan Gorge (Juukan Gorge Report)*.²⁵ Many of the recommendations of the report are yet to be implemented.

Submission: We support funding to implement the recommendations of the Juukan Gorge Report to ensure robust cultural heritage legislation and frameworks.

If you have any queries about the items above, or would like further information, please contact Pranamie Mandalawatta, Head of Social Justice and Public Law Reform, on 02 9926 0193 or Pranamie.Mandalawatta@lawsociety.com.au.

Yours sincerely

Ronan MacSweeney
President

²⁵ Joint Standing Committee on Northern Australia *A Way Forward Final report into the destruction of Indigenous heritage sites at Juukan Gorge (Juukan Gorge Report)*, October 2021, Recommendation 4: https://parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/024757/toc_pdf/AWayForward.pdf;fileType=application%2Fpdf.