



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: CCW:JBml221225

22 December 2025

Budget Submissions
NSW Treasury
52 Martin Place
Sydney NSW 2000

By email: budgetsubmissions@treasury.nsw.gov.au

Dear NSW Treasury,

NSW PRE-BUDGET SUBMISSION 2026-27

Thank you for the opportunity to respond to the NSW Treasury's consultation on the 2026-27 Budget. We have structured our letter to mirror the online form on the Have Your Say website. Our detailed submissions are contained under heading 9.

1. Please select the portfolio(s) your submission relates to

- Communities and Justice

2. Please select the policy area(s) your submission relates to

- Legal and justice

3. Please select a wellbeing theme(s) addressed by your submission

- **Connected:** Government services are accessible, effective and integrated.
- **Prosperous:** Workplaces are safe.
- **Secure:** Communities are safe. People have access to justice and protection under the law. Children and families are safe and supported.
- **Community:** Government is coordinated, transparent and trusted. Aboriginal people's voices are heard at the centre of government.

4. What challenge(s) would you like addressed in the 2026-27 NSW Budget, and why?

The Law Society of NSW suggests the 2026-27 NSW Budget prioritise access to justice and protection under the law, appropriate funding for the legal assistance sector, Indigenous justice, and youth justice.

5. What are your ideas to address those challenges?

We suggest the allocation of appropriate funding to provide accessible government and legal assistance services. This includes funding for:

- Legal assistance via access to Legal Aid, Community Legal Centres and Aboriginal Legal Services;



- Reliable audio-visual link (**AVL**) facilities for remote appearances in courts, especially in regional, rural and remote areas and the Local Court Bail Division;
- Court resourcing, including for specialist court lists and tribunals, such as the Youth Koori Court, the Industrial Court of NSW, and the NSW Civil and Administrative Tribunal (**NCAT**), including its Aboriginal tenancy list; and
- Therapeutic, rehabilitative and diversionary programs for children and young people.

Please see details in the submission below on funding priorities for the legal sector which we consider align with the Wellbeing themes and NSW Outcomes.

6. Are any programs in this policy area superseded by your proposal(s), or no longer necessary, or now a lower priority?

N/A.

7. What new or alternate ways would you suggest to fund new, or continuing programs?

Please see details in the submission below.

8. Please provide the executive summary of your submission

The Law Society of NSW submission focuses on funding priorities for the legal sector. We consider the 2026-27 NSW Budget should address the need for improving access to justice and protection under the law, which is a NSW Outcome under the Wellbeing Theme of 'Secure'.

To this end, we suggest the allocation of funding to the legal assistance sector; court resourcing; including specialist courts and tribunals; and therapeutic and diversionary programs, to facilitate access to services, including for vulnerable and marginalised cohorts in the community.

Appropriate resourcing for the legal assistance sector, including the Aboriginal Legal Service, as well as for specialist Indigenous lists (including the Youth Koori Court and the Aboriginal Tenancy list in the NCAT), is consistent with the requirements of the National Agreement on Closing the Gap, and will assist in meeting the needs of Aboriginal and Torres Strait Islander peoples in culturally appropriate ways. Further, resourcing for AVL facilities will promote inclusive and coordinated court services for regional, rural and remote communities.

Investment in NSW Courts and Tribunals is important to ensure a modern justice system that operates efficiently and preserves public trust and confidence. The Law Society supports further investment in those jurisdictions that deal with a high case load of criminal and civil matters, including the District and Local Courts. In respect of other jurisdictions, we suggest it is important that the Industrial Court, which was re-established in 2024, can properly serve its intended purpose as a one-stop shop for industrial justice. Funding additional judges for the Industrial Court of NSW to assist victims of work health and safety or criminal matters in the workplace to resolve their matters without excessive delays. Likewise, additional Members for the Guardianship Division of the NSW Civil and Administrative Tribunal will benefit persons with decision-making disabilities to respond to the needs of our growing ageing population.

In relation to youth justice, we consider that ensuring children are diverted into therapeutic and diversionary programs is essential to improving their prospects of rehabilitation and, in turn, promoting community safety.

9. Submission

Access to justice – Funding for the legal assistance sector

Wellbeing themes: Secure & Community

NSW Outcomes: People have access to justice and protection under the law. Aboriginal people's voices are heard at the centre of government.

We suggest the Government ensures that funding for the legal assistance sector is appropriate to meet existing legal need and is appropriately indexed to meet future levels of legal need.

The Independent Review of the National Legal Assistance Partnership (NLAP) (Independent Review of NLAP)

The Independent Review of NLAP identified systemic and widespread failings under the current NLAP arrangements 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 Australian 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 will be insufficient to meet existing levels of legal need, and the requirements of the National Agreement on Closing the Gap.

Additionally, the National Legal Aid's Private Practice Census 2024 Report^[2] indicates that, under the current funding arrangements, a significant number of 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

^[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> (Independent Review of the NLAP).

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

^[3] Independent Review of NLAP, 25.

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 people.

Submission: That the NSW Government has the opportunity to lead the work on sustainably resourcing the legal assistance sector in NSW, and to work with the Commonwealth and other states and territories to implement recommendation 18 of the NLAP Review report regarding rates of grants of legal aid, which provides that:^[4]

- grants of legal aid to private practitioners should be set at the same level as provided in the court scales (or some other relevant standard) where the matter is heard.
- State and territory Governments should provide \$337 million in 2025-26 for this purpose in relation to matters it funds under NLAP (apportioned 85% criminal matters, 13% family matters and 2% civil matters).
- Legal Aid Commissions baseline funding for 2025-26 should reflect this level of grants of legal aid across all categories of matters and they should be allowed to determine whether this additional funding is used for private practitioners or internal lawyers.
- A working group should be established with an independent chair, supported by independent consultants, to develop a framework for the future of the levels and structure of grants of legal aid, including for lawyer assisted alternative dispute resolution. This should include consideration of the cost of delivering culturally appropriate approaches.
- The Standing Council of Attorneys General should consider these recommendations with a view to varying baseline funding in 2027-28 in concert with the Commonwealth and other 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.

Representation for Aboriginal adults in the Local Court Bail Division by the Aboriginal Legal Service (NSW/ACT) Ltd (ALS)

The ALS provides crucial culturally appropriate legal services to Aboriginal and Torres Strait Islander people in NSW and plays an essential role in ensuring access to justice and addressing systemic inequalities. Currently, the Law Society understands the ALS is unable to service the Local Court Bail Division due to insufficient

^[4] Ibid, 139.



funding. This means all adult Aboriginal defendants refused bail by police cannot be represented by the ALS and instead must be represented by Legal Aid NSW, further burdening Legal Aid NSW's limited resources.

In our view, it is critical that the ALS receive funding to service the Bail Division so it can provide culturally safe legal advice and support to their clients. The ALS is best positioned to understand issues affecting local Aboriginal communities, is familiar with culturally safe services and available supports, and can provide the most effective and safe representation to Aboriginal clients. It is also crucial to maintain a range of legal assistance providers in the market.

Submission: Urgent funding to enable the ALS to represent Aboriginal adults in the Local Court Bail Division.

Access to justice – Court resourcing and accessibility

Wellbeing themes: Connected & Secure

NSW Outcomes: Government services are accessible, effective and integrated. People have access to justice and protection under the law.

Enhanced court resourcing, together with targeted efforts to improve accessibility for people with disabilities and for those living in regional, rural and remote areas, is essential to improving access to justice across NSW.

Declining court numbers and limited court circuits in regional, rural and remote areas

Our members in regional, rural and remote (RRR) areas have highlighted, as critical issues that create disparity in justice outcomes, the sustained decline in the numbers of physical court locations and reduction of circuit services.

The loss of the physical court presence and infrequent circuits, exacerbated by distance, transport and cost barriers, means RRR residents are often subject to delays, and justice is not seen to be done. In some cases this means the withdrawal of complaints or unwillingness to attend court. When urgent family law hearings are cancelled, for example, due to competing Local Court civil matters, it can escalate conflict and place families and children at risk.

Submission: Sufficient investment to make physical court locations available in more RRR areas, and to increase the number of circuit services.

Enhanced Court resourcing and accessibility, including capacity for remote appearance technology

We acknowledge the ongoing work to improve existing metropolitan court infrastructure, and note the ongoing need for sustained investment to modernise the court system and improve physical, digital and procedural accessibility. Continued investment in modernising the court system, including expanded use of reliable audio-visual link (AVL) and other technology-driven solutions can improve accessibility for all court users.

Our members have expressed concern that there is an urgent need to address the inadequacy of AVL facilities in many courts, particularly in RRR areas. Remote appearance technology can increase efficiency and accessibility by reducing travel time and costs where, for example, practitioners are located significant



distances from a court but have to spend many hours to attend a brief administrative hearing or mention. It can also facilitate greater productivity and flexibility by enabling reallocation of time saved on travel to other professional responsibilities including managing a diverse caseload across jurisdictions.

The capacity for remote appearance technology is similarly important in criminal matters, particularly in light of the establishment of the Bail Division in the Local Court, which aims to centralise and streamline the management of bail matters across New South Wales. The Bail Division oversees adult fresh custody matters in regional NSW plus some Sydney locations for weekdays and all of NSW on weekends. All matters in the Bail Division are conducted virtually by AVL in an online courtroom.

To support the effective delivery of the Bail Division, the Law Society considers it critical that funding is prioritised to ensure defendants, prosecutors and broader community members can access the Bail Division equitably. This includes investment in critical infrastructure, including private AVL facilities and sound-proofed conferencing rooms at police stations, so that defendants can receive confidential legal advice and properly engage in virtual court proceedings (including being able to see, hear and communicate with the court).

Submission: Ongoing investment to modernise the court system and improve physical, digital and procedural accessibility to ensure accessibility for all court users. Continued investment in modernising the court system, including expanded use of AVL and other technology-driven solutions to improve accessibility for all court users, including those from RRR areas and within the Bail Division of the Local Court.

Access to justice – Resourcing for specialist courts and tribunals

Wellbeing themes: Prosperous, Secure & Community

NSW Outcomes: Workplaces are safe. People have access to justice and protection under the law.

Government is coordinated, transparent and trusted. Aboriginal people's voices are heard at the centre of government.

Indigenous specific lists

We support courts continuing to receive funding for specialist Indigenous lists, such as the Walama List, Youth Koori Court and the NSW Civil and Administrative Tribunal's Aboriginal Tenancy List. Indigenous court lists have had demonstrated success in improving outcomes for Aboriginal and Torres Strait Islander people.

Circle Sentencing is a type of therapeutic justice whereby defendants are sentenced by a magistrate alongside representatives from the local Aboriginal community, such as Elders. The Law Society was pleased to note the expansion of the Circle Sentencing program in NSW to the Sydney Downing Centre in 2025. However, it was recently brought to our attention that Elders who sit on Circle Sentencing, an alternative sentencing court for Indigenous offenders in the NSW Local Court, are not compensated for their work on the Court.

The Youth Koori Court (**YKC**) was established in 2015 in Parramatta to respond to the significant over-representation of Aboriginal young people in the criminal justice system. With the assistance of Elders and other respected people from Aboriginal or Torres Strait Islander communities, the YKC seeks to identify risk

factors, such as homelessness, disengagement from education, drug and alcohol issues or other health issues, that may be impacting on the young person's involvement with the criminal justice system. Following the success of the YKC pilot in Parramatta, government funding was provided to expand the YKC to Surry Hills in 2019. A third YKC commenced at Dubbo on 24 March 2023.

Submission: Funding for specialist Indigenous Lists, including expanding the YKC to key regional locations across NSW in close consultation with local Aboriginal communities and stakeholders. Funding to provide appropriate recompense to Elders for their work on Circle Sentencing.

Industrial Relations Commission and Industrial Court of NSW

The changes made by the *Industrial Relations and Other Legislation Amendment (Workplace Protections) Act 2025 (NSW)* and *Industrial Relations Amendment (Transport Sector Gig Workers and Others) Act 2025 (NSW)* are expected to add about 300 applications (27% increase) and about 600 days of additional decision-maker work to the Commission's workload.

From 1 July 2024 to 30 June 2025, 1,123 matters were filed in the Commission. That constituted a 67% increase from the 672 matters filed in the Commission from 1 July 2023 to 30 June 2024. In the year ending June 2025, 204 work health and safety (**WHS**) prosecutions were commenced. In comparison, 106 WHS matters were filed in the District Court during its final year of accepting filings (1 July 2023 to 30 June 2024). As at 19 July 2025 the earliest available date for a defended WHS hearing is June 2026 (10-month delay). On current trends, absent additional resources, the delay is expected to be more than 18 months by the end of 2025.

The Industrial Court has three permanent judges and funding for 0.33 for acting judges. The non-WHS work of appeals, civil court proceedings and major industrial cases occupies the equivalent of about 2.5 judges.

Submission: Funding for greater resources, particularly additional Judges and Commissioners in relation to criminal matters, to the Industrial Relations Commission and the Industrial Court.

Supreme Court of NSW: Probate Registry and the online probate system

We note with gratitude that since the addition of two new Deputy Registrars to the Probate Registry of the Supreme Court of NSW, the processing time for new applications for probate, reseal, letters of administration or letters of administration has decreased from around 15 weeks in May 2025 to around three weeks in December 2025. We also express gratitude to the Chief Justice of NSW, the Honourable Andrew Bell, for pressing for enhancements to the online probate system.¹

Submission: Additional resources to the Probate Registry, and funding to the Digital Portfolio Team in the Department of Communities and Justice, for ongoing technical improvements to the online probate system.

¹ Statement in relation to probate applications and court-annexed mediation, Chief Justice of New South Wales (19 November 2025): <https://supremecourt.nsw.gov.au/documents/media/Probate-20251118.pdf>.

NSW Civil and Administrative Tribunal (NCAT): Guardianship Division

The Guardianship Division determines applications about adults who do not have capacity to make their own decisions, and who may require a legally appointed substitute decision maker. Many decisions made by the Guardianship Division have a profound effect on the autonomy of persons with decision-making disabilities, particularly in our increasingly ageing population.

Over the last financial year, the Guardianship Division has had 19,183 applications, which represents a 10% increase compared to the previous year. In 2023-24, the Guardianship Division received 17,232 applications.²

We understand that the primary driver of this growth continues to be the ageing population and the consequent increase in the number of people living with dementia and other age-related decision-making disabilities. Other factors contributing to this growth include increased public awareness of, and preparedness to report abuse and exploitation of people with disabilities and older people, difficulties dealing with the National Disability Insurance Agency, financial and other institutions on behalf of the subject person, and the introduction of safeguards to reduce the use of restrictive practices in residential aged care facilities. A further driver is family conflict generated by decisions about the subject person's accommodation, especially where the person owns a home.³

Submission: Additional resources for the Guardianship Division, particularly more multi-disciplinary Members who form the three-Member panel: a Senior (Legal) Member, a Senior (Professional) Member, and a General (Community) Member.

Therapeutic, rehabilitative and diversionary programs

Wellbeing themes: Secure & Communities

NSW Outcomes: Communities are safe. Children and families are safe and supported.

Youth justice

We support therapeutic and diversionary approaches to addressing harmful and antisocial behaviour by children and young people, as these approaches properly recognise that children and young people who have contact with (or are at risk of contact with) the criminal justice system often have a raft of unmet social, cultural and developmental needs that drive their offending, which entrenchment in this system will not address. Ensuring these children are diverted into therapeutic, wraparound supports and services is essential to improving their prospects of rehabilitation and, in turn, promoting community safety.

Submission: Funding to implement the recommendations of the recent 'Review of the operation of doli incapax in NSW for children under 14' (**Review**), in particular:

² NSW Civil and Administrative Tribunal Annual Report 2023-2024, 42: <https://ncat.nsw.gov.au/documents/reports/ncat-annual-report-2023-2024.pdf>.

³ Ibid 43.



- Introducing a voluntary alternative intervention pathway for children who are in contact with, or who are at risk of contact with, the criminal justice system, which can receive referrals, conduct assessments, and develop support plans for children with complex needs (Recommendation 6); and
- Introducing court orders to mandate engagement by a child in therapeutic treatment in appropriate circumstances (Recommendation 7).

Aboriginal Community Controlled Organisations (ACCOs)

The NSW Government has recognised, in signing the National Agreement on Closing the Gap, that ACCOs are better positioned to support Aboriginal and Torres Strait Islander people, achieve better outcomes, and employ more Aboriginal and Torres Strait Islander people, and are often preferred over mainstream services.³ Moreover, ACCOs are inextricably connected to the communities they serve, which drives high quality service delivery and positioning these organisations to deliver tailored and trusted tailoring of services based on local needs and strengths. We suggest that the close involvement of ACCOs in service design and delivery is critical, in order, and makes such organisations best placed to effectively meet the complex and intersecting needs of systems-impacted children.

Submission: Sustainable funding for ACCOs to support Closing the Gap outcomes.

Domestic violence

We support ongoing funding for rehabilitative and education plans for domestic violence offenders and alleged offenders, including programs which are culturally appropriate, noting that Aboriginal people are overrepresented as both perpetrators and victims of domestic violence.⁴ These programs are essential to reducing rates of recidivism and violence in the longer term. We note that the NSW Government recently announced a strategy to address perpetrator behaviour, *Building Better Responses: NSW Strategy to Respond to the Use of Domestic and Family Violence 2026–2030*.

Submission: Funding for rehabilitative and education plans for domestic violence offenders and alleged offenders,

If you have any queries about the items above, or would like further information, please contact Mimi Lee, Policy Lawyer, on 02 9926 0174 or mimi.lee@lawsociety.com.au.

Yours sincerely

Jennifer Ball
President

⁴ Australian Government, '[Aboriginal and Torres Strait Islander people - Australian Institute of Health and Welfare](#)' (Updated as at 30 July 2025).