

2025 Federal Election

Call to Parties

Shaping Australia's future: Protecting the rule
of law and promoting access to justice

March 2025



Law Council
OF AUSTRALIA

Key Policy Priorities

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Introduction

The Law Council of Australia is the peak national representative body of the Australian legal profession. Through its Constituent Bodies—the 16 state and territory law societies and bar associations and Law Firms Australia—the Law Council represents more than 107,000 Australian lawyers. On matters of federal, national and international significance, the Law Council’s key objectives include promoting and defending the rule of law, the administration of justice, access to justice, a strong legal profession and improvement of the law.

We are living at a time of challenges to the rule of law across the globe—in which maintaining trust in public institutions is critically important. There is an increasing emphasis on ‘law and order’ in domestic discourse, unmet legal need remains widespread, and emerging technologies are creating new opportunities and challenges.

As such, there has never been a more important time to consider how law reform and government investment can best promote the rule of law, the administration of justice, good lawmaking and the exercise of rights under the law.

Ahead of the 2025 Federal Election, the Law Council has prepared this Call to Parties, which outlines a set of what the Australian legal profession has identified as key policy priorities.

Through this Call to Parties, we seek the commitment of the various political parties and independent candidates to the reforms needed to improve law and policy for the betterment of the Australian community and our democracy.

Responses received by parties and independent candidates will be made available on the Law Council’s website to allow consideration by the legal profession and the public.¹

1 Law Council of Australia, [Federal Election 2025: Call to Parties](#) (Web Page, March 2025).

Meaningful consultation, transparency and accountability

Good lawmaking underpins Australia's long history of democracy and stable government. It underpins the rule of law and the premise that the law must be certain, clear and fair.

Good lawmaking depends on robust and transparent consultation processes, which engage the community broadly and ensure public scrutiny and informed debate.

Robust scrutiny ensures that laws passed by the Australian Parliament avoid unintended consequences and take into account regulatory impacts, rule of law principles and Australia's international human rights obligations. It ensures that Executive powers are carefully defined by law and that their exercise is subject to meaningful oversight. It promotes public acceptance and compliance with the law.

The Law Council is concerned that legislative reform processes are increasingly rushed and lack transparency or public scrutiny. Consultations are often closed, exposure drafts of legislation lacking, and parliamentary inquiry periods greatly truncated. This impacts the efficacy, accuracy and appropriateness of potential reforms. It also undermines the participation of civil society, and may erode democratic culture and decision making.

The urgency of the circumstances or nature of particular reforms may, on occasion, require a different approach. However, this should be the exception, not the norm. Consultation with the legal profession on all proposed reforms that affect the profession itself—the rule of law, the administration of justice, and access to justice—is particularly vital.

Good lawmaking underpins Australia's long history of democracy and stable government. It underpins the rule of law and the premise that the law must be certain, clear and fair.



The Law Council calls for a commitment to:

- Adhere to the *Australian Government Guide to Policy Impact Analysis and Best Practice Consultation guidance*,² which underlines that:
 - consultation processes should be broad-based, ongoing, accessible, transparent, and not rushed or burdensome;
 - comprehensive discussion papers should be issued prior to substantial reform, so that only necessary legislation and regulations are drafted; and
 - legislation should generally undergo an exposure draft process.
- Provide at least six weeks for civil society to respond to law reform proposals in discussion papers, exposure drafts and Parliamentary inquiries.
- Improve upfront explanation of the issues and gaps to be addressed by new laws, their regulatory impacts and human rights/rule of law implications.
- Improve Parliamentary inquiry timeframes and processes to ensure meaningful scrutiny, including better human rights and regulatory impact statements.
- Consult with the Law Council on all reforms impacting the rule of law, the administration of justice, and access to justice, and reforms affecting the legal profession.

² Office of Impact Analysis, Department of the Prime Minister and Cabinet, [Australian Government Guide to Policy Impact Analysis](#) (17 February 2023), and [Best Practice Consultation](#) (July 2023).

Legal assistance delivery

Australia's legal assistance sector is intended to be there for members of our community during times when they experience significant vulnerability, hardship and stress.

Every day, Australia's legal assistance services—including Legal Aid Commissions, Community Legal Centres, Aboriginal and Torres Strait Islander Legal Services (**ATSILS**), Women's Legal Services and Family Violence Prevention Legal Services (**FVPLS**)—are relied upon by Australians to help to resolve their family law disputes, remove themselves from harm, enforce their employment rights, defend themselves against charges, or make sure they have a roof over their head.

Yet, for decades, these services have faced significant underfunding with real costs for individuals, families and communities. Since the late 1990s, Commonwealth funding of our Legal Aid Commissions on a per capita basis has been in steady decline.³

A new *National Access to Justice Partnership* (**NAJP**) will commence on 1 July 2025 and provides significant additional and ongoing Commonwealth funding across all legal assistance services. This is an important and welcome development. However, the increase in NAJP funding remains far from what is required to rectify outstanding shortfalls, and to address the ongoing sector

pressures. The ability to address rapidly emerging areas of legal need, such as natural disasters, also remains highly uncertain.

The Final Report of the *Independent Review of the National Legal Assistance Partnership* (**Independent Review of the NLAP**) provides clear guidance for how access to justice in Australia can be dramatically improved.⁴ Many of the Independent Review's 39 recommendations will require additional resourcing, shared across Commonwealth, state and territory governments. A comprehensive response to implementing each of the recommendations contained in this Report is still needed.

This Call to Parties outlines other areas in which urgent injections of funding remain needed, such as for First Nations persons, and persons who are older or with disability.

Private practitioners delivering legal aid

While the Law Council remains deeply concerned by the inadequacy of resourcing for all legal services funded by the NAJP, an overlooked recommendation of the Independent Review (recommendation 18) recognises the low rates paid under grants of assistance to the private profession for delivering legal aid matters.

3 PwC, Update to Projected Real Funding of Legal Aid Commissions (Advice from PwC to the Law Council of Australia, October 2023).

4 Warren Mundy, [Independent Review of the National Legal Assistance Partnership 2020-25](#) (Final Report, March 2024).

The private legal profession is indispensable to the delivery of legal aid services. In 2022-23, the private legal profession undertook 72 per cent of approved legal aid cases across Australia.⁵ Each year, these practitioners deliver over 100,000 cases involving Australians in times of need. These practitioners are vital to their communities.

It is important to recognise who these practitioners are. The recent 'census' of legal aid private practitioners identified that:

- most of these lawyers are either self-employed sole practitioners (32 per cent) or working in very small private practices of only 2-4 paid staff (28 per cent);
- the majority are women (58 per cent); and
- many are providing legal aid services in rural, regional, and remote (RRR) areas (37 per cent of participants deliver legal aid both in and outside of capital cities and 30 per cent work only outside of the capital cities).⁶

But the rates awarded to private practitioners are so low—the average hourly legal aid rate for private lawyers hasn't changed in 10 years in some states—that legal aid work is rapidly becoming unsustainable and is putting the delivery of publicly-funded legal assistance at serious risk. Practitioners in small businesses who strive to help vulnerable community members in need are being placed in an impossible situation. They cannot sustain legal aid service delivery at current rates while their costs continue to rise significantly.

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5 Impact Economics and Policy, [Justice on the Brink: Stronger Legal Aid for a Better Legal System](#) (Report prepared for National Legal Aid, November 2023) 18.

6 UNSW Social Policy Research Centre, [Legal Aid Private Practitioners: 2024 Census](#) (Final Report prepared for National Legal Aid, 5 February 2025) 3.

Recent data shows that, as a result of these challenges, 20 per cent of private practitioners undertaking legal aid work are unsure whether they will continue beyond the next 12 months, and 11 per cent already want to cease delivering legal aid.⁷ This potential system failure places the broader legal assistance sector at real possibility of collapse, which will, in turn, have dire consequences for communities reliant on these services.

At the same time, however, the Commonwealth continues to spend on its own legal services without the same constraints applied to legal aid grants. In 2022-23, the Commonwealth's total legal services expenditure was \$1.34 billion, an increase of 12.7 per cent in one year.⁸

Legal aid rates should be designed to ensure sustainable participation by the profession in the delivery of access to justice. The Independent Review recommended that \$46 million per annum in Commonwealth funding is required to address this risk. The Independent Review also estimated that more than \$80 million per annum is required to ensure that private practitioners can take on work as Independent Children's Lawyers (ICLs).

Identifying and addressing legal need

System improvements are also needed. The Independent Review recommended that the Australian Bureau of Statistics undertake a regular national legal needs survey, to measure both met and unmet legal need. This is critical to ensuring that legal assistance funding is evidence-based and directed to the most pressing needs.

We strongly support Justice Impact Tests to determine the impact of new initiatives or reforms and factor in their impact on legal assistance services (and courts). Too often, law or policy reforms are unaccompanied by funding boosts, and this lack of forethought undermines their likely success. The simple effectiveness of a Justice Impact Test will require lawmakers to consider the justice resources required at the time legislation is introduced. A similar recommendation was contained in the Independent Review.⁹

7 Ibid 3.

8 Attorney-General's Department, [Legal Services Expenditure Report 2022-23](#) (2024) 4.

9 Warren Mundy, [Independent Review of the National Legal Assistance Partnership 2020-25](#) (Final Report, March 2024) rec 22.



The Law Council calls for a commitment to:

- Provide a comprehensive response to the 39 recommendations made in the *Independent Review of the National Legal Assistance Partnership*.
- Provide significant additional funding to legal services funded under the new NAJP to expand current means testing arrangements and increase grants of legal aid, particularly of those areas where there is substantial unmet need, including family and civil law, employment law, consumer law, social security decisions and abuse of older persons.
- Establish a financially sustainable model of grants of legal aid to private practitioners (including ICLs) to ensure they can continue their critical role of delivering high-quality legal assistance services across Australia.
- Establish an appropriately resourced and ongoing national survey to better understand the legal needs of Australians, including priority groups experiencing disadvantage, legal issues, location and access at a population level.
- Introduce Justice Impact Tests to facilitate the smoother development of laws and policies with downstream impacts on the justice system and legal need.
- Provide sustainable funding to legal assistance providers to allow them to develop and maintain suitable preparedness to respond to community legal need during natural disasters and other unexpected circumstances.

Supporting rural, regional and remote lawyers

Australians living in RRR areas deserve the same level of support and access to justice, as those in metropolitan areas.

Access to justice requires lawyers to be physically based throughout our communities to provide essential in-person services and build trust with those who live there. Lawyers in RRR areas are the mainstay of vital community and service organisations, and are critical to the longevity and connectedness of their communities.

Geographical barriers to accessing justice exacerbate acute existing needs, especially for older persons, victim-survivors of family violence, First Nations people, people from diverse cultural and linguistic backgrounds and people with disability. The availability of qualified legal practitioners in RRR communities is critical in ensuring that they can establish and defend their rights.

An enduring challenge of RRR legal service delivery stems from the difficulty in attracting and retaining lawyers to work in these areas. While one-third of Australians live outside of our capital cities,¹⁰ fewer than 10 per cent of lawyers practise in a RRR location.¹¹ The financial and logistical barriers of relocation deter individuals from pursuing this option.

To address these challenges, practitioners must be incentivised to join the RRR workforce.

The Law Council advocates for a Higher Education Loan Program (HELP) debt relief scheme for lawyers who live and work in an eligible rural, remote, or very remote area for at least two years.¹²

This scheme—already available to health practitioners and teachers—would facilitate improved access to justice for these communities, while not requiring significant Commonwealth expenditure. The Regional Australia Institute reports that two in five urban workers would move to an RRR area if a financial incentive were involved.¹³ Notwithstanding recent commitments to reduce all student loan

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10 Australian Bureau of Statistics, [Census 2021](#) (Web Page, June 2022).

11 Urbis, [2022 National Profile of Solicitors](#) (Report prepared for Law Society of New South Wales, April 2023) 3.

12 Law Council of Australia, [HELP debt reduction and indexation relief for legal practitioners working in rural, regional and remote locations](#) (Position Paper, December 2023).

13 Regional Australia Institute, [Nearly half of all urban workers would move to regional Australia for a better salary](#) (Media Release, 4 July 2023).



debts by 20 per cent,¹⁴ additional targeted debt relief is urgently required to provide essential, face-to-face legal assistance to RRR communities.

Dr Warren Mundy, in his Independent Review of the NLAP, recommended an iteration of the RRR HELP debt relief scheme.¹⁵

While more limited than the Law Council's proposal, it represents a sound starting point for the creation of targeted incentives to meet the demand for legal services in RRR areas.

This scheme would also support the ongoing viability of small legal businesses in RRR areas.

The role of small business grants programs to support small law practices, particularly in RRR areas, to navigate technology adoption and increased regulatory privacy, cyber and technology requirements should also be considered.

This would enhance capability, compliance and awareness of artificial intelligence (AI) and other digital technologies.

The Law Council calls for a commitment to:

- Establish a HELP debt relief scheme for legal practitioners who reside and work in eligible rural, remote, and very remote areas, to incentivise the recruitment and retention of qualified lawyers in underserved RRR areas.
- Consider the role of small business grants programs to support small law practices, particularly in RRR areas, to navigate technology adoption and increased privacy, cyber and technology requirements.

14 Hon Anthony Albanese MP, Prime Minister of Australia, et al, [Albanese Labor Government to cut a further 20 per cent off all student loans debt](#) (Media Release, 3 November 2024).

15 Warren Mundy, [Independent Review of the National Legal Assistance Partnership 2020-25](#) (Final Report, March 2024) 175, rec 26.

Courts and Tribunals

Addressing backlogs and delays

In recent years there have been important funding injections for the federal courts. These have focused on addressing particular backlogs: for example, in family and migration matters. However, a number of critical backlogs and delays—which may be specific to particular locations (especially RRR) or practice areas—continue to impact the federal justice system. Extensive delays can exacerbate legal issues, and add to conflict and costs incurred by the parties.

There has not been a full-scale review and assessment of the resourcing needs of federal courts and tribunals in recent years. There should be a comprehensive review, to ensure that funding is allocated where it is most needed.

Federal Circuit and Family Court of Australia

The 2024 amendments to Part VIII of the *Family Law Act 1975* (Cth) make family violence a prominent and meaningful consideration in property alteration.¹⁶ This is likely to lead to a significantly larger and more complex caseload for the Federal Circuit and Family Court of Australia (FCFCOA).¹⁷ Without additional resourcing to respond to this likely change in caseload, the intended effect of the reforms could be undermined by longer hearings and fewer matters being heard within the same timeframe.

In 2022-23, the FCFCOA received funding to expand *Lighthouse*, an innovative approach taken by the Courts to screen for, and manage, family violence and other safety risks for families involved in the family law system across 15 registries nationally.¹⁸ This funding will expire on 30 June 2026. Ongoing funding for this fundamental part of the Court's case management processes is required. Funding should be provided to expand *Lighthouse* to all regional registries and circuit locations.

Additionally, the Priority Property Pool Cases model of case management should extend to RRR circuits.¹⁹

Resourcing to meet RRR and on-country needs

Increased resourcing is needed to meet the needs of RRR users of courts and court services. This means appointing judges to hear matters expeditiously, and resourcing registries through appropriate staffing levels, technology, and fit-for-purpose hearing, interview and wait rooms. There may also be significant benefit in conducting on-country hearings for appropriate matters involving First Nations persons in RRR areas, should community consultations support this.

16 See *Family Law Amendment Act 2024* (Cth).

17 And the Family Court of Western Australia, as a state court exercising federal jurisdiction.

18 Federal Circuit and Family Court of Australia, [Lighthouse](#) (Web Page).

19 Federal Circuit and Family Court of Australia, [Finances and property](#) (Web Page).



Technology and digital infrastructure of courts and tribunals

The technology and digital infrastructure of federal courts and tribunals should be improved, to increase access to justice, and ameliorate delay and inefficiency. For instance, legal practitioners have consistently raised concerns regarding the lack of accessible wi-fi within certain courts and tribunals. To help parties with limited access to technology or limited capability to participate in court with their own devices, 'hubs' could be established with accessible technology in locations closer to parties.

The use of AI technology within the justice system may present some opportunities for increased efficiency. However, it also presents novel challenges and risks which require careful consideration. Federal courts and tribunals should be well-resourced to understand the nuanced impacts of different forms of AI and different users to develop appropriate procedures to manage these consistently and clearly, with oversight to avoid divergence and duplication, in administering justice.

Timely judicial appointments

Delays in judicial appointments have been common, and the impacts can be significant. This is compounded when retiring judges require time to wind down their docket, and new judges require periods of time to be trained and reach their full efficiency. Pre-appointments may also be appropriate to allow for a period of transition.

Right to representation before the Fair Work Commission

Under section 596 of the *Fair Work Act 2009* (Cth) (**FW Act**) parties must seek leave from the Fair Work Commission to be represented by a lawyer or paid agent. The Law Council considers that section 596 should be repealed. Rather than acting as an impediment to the swift and efficient resolution of employment related claims, legal representation allows for the prompt identification of the relevant facts and legal questions to be determined. This supports the proper administration of justice.

Section 596 of the FW Act could be replaced by a provision like section 66 of the *Administrative Review Tribunal Act 2024* (Cth), which recognises a right to representation except in certain specified circumstances.



The Law Council calls for a commitment to:

- Commission, in collaboration with the federal courts, a review of the resourcing needs of the federal courts system to identify areas of acute demands and backlogs with a commitment to addressing those needs.
- Provide additional resourcing for the FCFCOA to respond to increased demands following the 2024 amendments to Part VIII of the Family Law Act.
- Provide ongoing funding to Lighthouse and expand its availability in all regional registries and circuit locations.
- Provide dedicated resourcing to better enable the federal courts to serve RRR communities better and to canvass on-country hearings.
- Set up hubs with accessible technology and filing ability in RRR areas, in partnership with various organisations, to allow for meaningful participation in court events for people with limited access to technology and devices.
- Provide sufficient funding to federal courts and tribunals to respond to the impacts of AI technology and develop appropriate procedures to manage these consistently in administering justice.
- Replace retiring judges as efficiently as possible and consider pre-appointments to allow for a period of transition.
- Repeal or amend section 596 of the FW Act so that parties before the Fair Work Commission have an automatic right to legal representation.

Establishment of a Federal Judicial Commission

It is essential to the promotion of the rule of law and the Australian constitutional system that there be a strong, independent and transparent judiciary. This requires a well-understood means of addressing complaints about the federal judiciary in an independent, structured, fair and timely manner. The Law Council strongly supports the establishment of an appropriately constituted and properly resourced Federal Judicial Commission to perform this function. A Federal Judicial Commission should be established consistently with the design principles set out in our policy statement on the Principles Underpinning a Federal Judicial Commission.²⁰

The Law Council considers that the role of a Federal Judicial Commission should extend to providing resources, support and education to the judiciary, including

providing guidance on acceptable standards of judicial conduct.

Such a function would facilitate the Federal Judicial Commission—and therefore, the federal judiciary—to learn from complaints, to effect improvements in processes, to further equip judicial officers with the necessary knowledge and skills, and to identify circumstances requiring additional pastoral care.²¹

In the 2022–23 Budget, the Australian Government committed to scoping the merits and design of a Federal Judicial Commission.²² In January 2023, the Attorney-General's Department released a Discussion Paper entitled *Scoping the establishment of a federal judicial commission*.²³ It is unclear whether further progress has been made on this issue.

The Law Council calls for a commitment to:

- Establish a standalone Federal Judicial Commission to deal with any allegation of lack of competency, serious misconduct or corruption in the federal courts.
- Ensure that the Federal Judicial Commission also supports the provision of education, training and support for judicial officers.
- Provide adequate resourcing to ensure the Federal Judicial Commission can carry out its functions appropriately.

20 Law Council of Australia, [Principles Underpinning a Federal Judicial Commission](#) (Policy Statement, 25 March 2023).

21 Australian Law Reform Commission, [Without Fear or Favour: Judicial Impartiality and the Law on Bias](#) (Final Report, December 2021) 335–336.

22 Hon Mark Dreyfus KC MP, Attorney-General, [Investing in Integrity, Human Rights and Safety](#) (Media Release, 25 October 2022).

23 Attorney-General's Department, [Scoping the establishment of a federal judicial commission](#) (Discussion Paper, January 2023).

Mandatory sentencing

The Law Council strongly opposes the use of sentencing provisions that stipulate a particular type of sentence and/or a certain minimum term of imprisonment that must be imposed. A range of mandatory minimum imprisonment provisions continue to exist in Commonwealth legislation.²⁴

During the 47th Parliament, the Law Council expressed grave concern about consequential changes to Commonwealth criminal law imposing minimum periods of imprisonment.²⁵ These measures have also increasingly been adopted in recent amendments to the *Migration Act 1958* (Cth).²⁶ Notably, in some cases, these measures were introduced with very little opportunity for scrutiny and with limited justification.²⁷

Mandatory sentencing regimes impose unacceptable restrictions on judicial discretion and independence, are inconsistent with rule of law principles, and undermine confidence in the system of justice. Judges are best placed to determine the appropriate and just penalty under these laws on an individual, case-by-case basis.

Mandatory sentencing is also inconsistent with Australia's international human rights obligations.²⁸

In practice, these provisions reduce the likelihood that an accused person will enter a plea of guilty, thus, further protracting the resolution of matters and increasing burdens on the court system.

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24 See, eg. various Commonwealth child sexual abuse offences across Divisions 272, 273, 471 and 474 of the *Criminal Code Act 1995* (Cth). These offences are subject to mandatory minimum sentences pursuant to s16AAA and 16AAB of the *Crimes Act 1914* (Cth).

25 See, eg. in relation to the Criminal Code Amendment (Hate Crimes) Bill 2024 (Cth): Law Council of Australia, [Mandatory Sentencing is not the answer](#) (Media Release, 6 February 2025).

26 See, eg. *Migration Amendment (Bridging Visa Conditions) Act 2023* (Cth); *Migration and Other Legislation Amendment (Bridging Visas, Serious Offenders and Other Measures) Act 2023* (Cth); *Migration Amendment (Removal and Other Measures) Act 2024* (Cth).

27 For example, on 16 November 2023, following the NZYQ decision, the *Migration Amendment (Bridging Visa Conditions) Act 2023* (Cth) passed through both Houses of Parliament on the same day, without referral to a parliamentary committee.

28 See [International Covenant on Civil and Political Rights](#), opened for signature 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976), articles 9 and 14.



Mandatory sentencing laws are arbitrary and can limit an individual's right to a fair trial by preventing judges from imposing an appropriate penalty based on the unique circumstances of each offence and offender. They impact disproportionately on particular groups, including First Nations people, younger people, and persons with a mental health condition or cognitive impairment.

As the High Court has recently clarified, mandatory minimum term of imprisonment generally increases the severity of the appropriate term of imprisonment for that offence.²⁹ There is a distinct lack of evidence as to their effectiveness, either as a deterrent or in reducing crime.

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The Law Council calls for a commitment to:

- Review the effectiveness, necessity and proportionality of mandatory sentencing provisions across all Commonwealth offences, including minimum periods of imprisonment and minimum non-parole periods.
- Repeal all Commonwealth provisions imposing mandatory minimum periods of imprisonment.
- Amend the Attorney-General's Department's *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers* to state that any proposal to introduce such provisions should be accompanied by a detailed proportionality analysis.³⁰

²⁹ *Hurt v The King* (2024) 98 ALJR 485, [54].

³⁰ Attorney-General's Department, [A Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers](#) (version 3.1, updated May 2024).

Commonwealth criminal law institutions

Federal Parole Authority

The Law Council reiterates its support for taking the politics out of parole.³¹ The basic right of incarcerated individuals to have their application for liberty considered in a transparent and accountable manner requires establishment of an independent Federal Parole Authority (or Commonwealth Parole Board³²) to make parole decisions. This addresses the risk of perceived political interference in parole decisions and brings the federal process in line with state and territory jurisdictions.

The successful functioning of a Federal Parole Authority will be determined by the extent to which it is underpinned by four key design principles: independence, transparency, procedural fairness, and accountability.

The Federal Parole Authority should be overseen by an agency head who is appointed by the Governor-General (subject to statutory protections to ensure their independence and expertise) and have staff who are employed directly under its own governing Act. The membership of a Federal Parole Authority should include a mix of legally qualified persons and individuals with broader inter-disciplinary expertise relevant to the objectives of the parole system. It should include First Nations members and otherwise reflect the diversity of the Australian community.

The establishment of an independent Federal Parole Authority should be accompanied by the necessary investment in additional legal assistance funding to assist federal offenders to respond to notices of intent to refuse parole, to represent them at any hearing, and, if necessary, to challenge adverse decisions.

“The basic right of incarcerated individuals to have their application for liberty considered in a transparent and accountable manner requires establishment of an independent Federal Parole Authority to make parole decisions.”

31 Law Council of Australia, [Taking the politics out of parole](#) (Media Release, 21 December 2022).

32 The 2025-26 Federal Budget included \$28.3 million over four years from 2025-26 (and \$7.3 million per year ongoing) to establish a 'Commonwealth Parole Board'. The Treasury, *Budget 2025-26* ([Budget Paper No. 2 - Budget Measures, 25 March 2025](#)) 21.



Commonwealth Criminal Cases Review Commission

Where new or fresh evidence bearing on the original finding of guilt or the fairness and/or probity of the original proceedings, becomes available after the appeal process has been exhausted, there should be a mechanism for these matters to be referred to the courts and appropriately addressed. Recent cases highlight the absence of such a mechanism at the Commonwealth level.³³ The Law Council reiterates its support for establishing a Commonwealth Criminal Cases Review Commission to address this gap.³⁴

In the United Kingdom, a similar mechanism has been in place for some time.³⁵ The Commission should be empowered to consider applications for review from people convicted and sentenced for Commonwealth offences. It should be empowered to refer a matter back to the appeal court for review where the Commission is satisfied that there is a real possibility that the conviction, verdict, finding or sentence would not be upheld were the reference to be made. To fulfil its mandate, the Commission should be invested with broad information-gathering powers. Applicants to the Commission should have access to legal assistance to make their application.

The Law Council calls for a commitment to:

- Establish a Federal Parole Authority as an independent statutory body, empowered to make parole decisions for federal offenders.
- Adequately resource the Federal Parole Authority, including funding legal assistance in appropriate cases.
- Establish a Commonwealth Criminal Cases Review Commission.

33 See, eg, Penn Timms, Millie Roberts and Giselle Wakatama, [Kathleen Folbigg has convictions for killing her four children overturned](#) (ABC News Online, 14 December 2023); *Attorney-General (Cth) v Huynh* [2023] HCA 13.

34 Law Council of Australia, [Policy statement on a Commonwealth Criminal Cases Review Commission](#) (Policy Statement, 2014).

35 The Criminal Cases Review Commission established under the *Criminal Appeal Act 1995* (UK).

First Nations justice

Closing the Gap

The over-incarceration of First Nations peoples remains an indictment upon our nation. So, too, is the disproportionately large number of First Nations children in the care and protection system.

The *National Closing on Gap Agreement* contains 19 targets across 17 'outcomes', including ensuring that First Nations people are not overrepresented in the criminal justice system and the child protection system.³⁶

Disappointingly, as measured by the Productivity Commission in its 2024 *Closing the Gap Annual Data Compilation Report*, many critical targets and outcomes are not on track to be met.³⁷ Some measures are even worsening, including First Nations adults in incarceration and First Nations children in out-of-home care, while there was no progress on the over-representation of First Nations young people in the criminal justice system.

As identified by the Productivity Commission, fundamental changes that disrupt the 'business-as-usual' approaches regularly adopted by Australian governments are required if progress is to be made towards meeting the Closing the Gap targets.³⁸ These approaches mean that Governments too often contradict their own commitments as set out in the Agreement, fail to reflect the priorities and perspectives of First Nations

people, and exacerbate disadvantage and discrimination. The Law Council joins the Productivity Commission in calling for whole-of-government, whole-of-organisation strategies for driving and delivering transformation.

Funding community-controlled legal services

ATSILS and FVPLS play an essential role as specialised, independent, culturally safe and community-controlled organisations providing legal and other important services to First Nations people across Australia.

The new NAJP commencing on 1 July 2025 will provide welcome additional funding for these services which will particularly support improved pay and conditions for their workers. However, the Law Council understands that the funding increase is insufficient to meet growing demand for community-controlled legal services (including in areas like family and civil law). The current wave of state and territory government 'tough on crime' responses is likely to further increase demand.

36 [National Agreement on Closing the Gap](#) (An Agreement between the Coalition of Aboriginal and Torres Strait Islander Peak Organisations, and all Australian Governments, July 2020), Outcomes 10, 11 and 12.

37 Productivity Commission, [Closing the Gap – Annual Data Compilation Report](#) (31 July 2024).

38 Productivity Commission, [Review of the National Agreement on Closing the Gap – Final Report](#) (24 January 2024).

United Nations Declaration on the Rights of Indigenous Peoples

The principle of self-determination underpins the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP), which is the comprehensive human rights standard informing the way governments should engage with and protect the rights of Indigenous peoples. While Australia announced its support for the UNDRIP in 2009, the Australian Government is yet to implement its standards and protections domestically in a formal, comprehensive manner.³⁹

The Law Council strongly supports the domestic implementation of the UNDRIP in Australia to ensure that the rights of First Nations peoples are front and centre when considering reforms to law, policy and practice. To this end, the Australian Government should engage with First Nations peoples to develop a National Action Plan to implement the UNDRIP. At the federal level, this could include amending the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth) to require an assessment of compatibility with the UNDRIP, as well as the introduction of a federal Human Rights Act that reflects the UNDRIP as

recommended by the Parliamentary Joint Committee on Human Rights in its 2024 Report on its *Inquiry into Australia's Human Rights Framework*.⁴⁰

Cultural heritage protection

There has been a systemic failure of Australia's Commonwealth, state and territory legislation to protect First Nations cultural heritage. Following the destruction of caves at the Juukan Gorge in the Pilbara region of Western Australia and the subsequent parliamentary inquiry by the Joint Standing Committee on Northern Australia in November 2022,⁴¹ the Australian Government accepted a recommendation to legislate for new and overarching protection of cultural heritage at the national level, 'within the framework of the UNDRIP, particularly the principle of self-determination'.⁴²

However, consultations on reforms to Australia's national cultural heritage laws paused in mid-2023 and have not resumed. At the very least, the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth) should be reviewed and reformed.

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- 39 [United Nations Declaration on the Rights of Indigenous Peoples](#), GA Res 61/295, UN Doc A/RES/61/295 (Adopted 13 September 2007).
- 40 Parliamentary Joint Committee on Human Rights, [Inquiry into Australia's Human Rights Framework](#) (Report, May 2024).
- 41 Joint Standing Committee on Northern Australia, [Inquiry into the destruction of 46,000 year old caves at the Juukan Gorge in the Pilbara region of Western Australia](#) (November 2022).
- 42 Australian Government, [Australian Government response to the Joint Standing Committee on Northern Australia's: A Way Forward: Final report into the destruction of Indigenous heritage sites at Juukan Gorge and Never Again: Inquiry into the destruction of 46,000 year old caves at the Juukan Gorge in the Pilbara region of Western Australia - Interim Report](#) (November 2022).



The Law Council calls for a commitment to:

- Drive transformative change across key portfolios responsible for Closing the Gap, in line with the recommendations of the Productivity Commission in its *Review of the National Agreement on Closing the Gap*.
- Work closely with ATSILS and FVPLS to better understand the legal needs—criminal, family and civil—driving demand for their services and match funding accordingly.
- Engage with First Nations peoples to develop a National Action Plan to formally and comprehensively implement the UNDRIP in Australia, including through legislative reform.
- Legislate stronger and more effective First Nations cultural heritage protections at the federal level.

National child justice response

As reinforced by the Law Council over many years of advocacy, child justice policy responses across Australia are often inconsistent, ineffective, unsupported by evidence, and non-compliant with rule of law principles and Australia's obligations under international law. These policy responses fail to protect the rights and interests of children, and have a disproportionate impact on First Nations children.

It is important to acknowledge that children can and do engage in behaviour that can have significant and harmful effects on their victims—and that our society needs to develop effective policy responses to such behaviour and support victims.

However, the regressive policies adopted recently across many Australian jurisdictions feed into a cycle of offending, punishment and recidivism. This not only fails to promote community safety, but also fails to acknowledge that these children are also frequently themselves victims of crime, poverty and disadvantage.

In accordance with Australia's international human rights obligations, children should only be detained as a last resort and for the shortest appropriate period of time. As set out in the Law Council and Australian Medical Association's *Policy Statement on the Minimum Age of Criminal Responsibility*, the minimum age of criminal responsibility (**MACR**) should be raised

to 14 years in all jurisdictions—including the Commonwealth—to ensure that we respond to the complex needs of 10–13 year-olds, instead of incarcerating them.⁴³

Where children do break the law, their best interests should be a primary consideration in line with Australia's obligations under the *United Nations Convention on the Rights of the Child* (**CRC**), as informed by the UNDRIP. The evidence supports prevention, early intervention and diversion responses to reduce recidivism. These rely on multi-jurisdictional and whole of government system design and coordination well beyond the criminal justice system. Along with state and territory governments, the Australian Government—across multiple portfolios—has a critical role to play in this regard.

In June 2024, the National Children's Commissioner released the report *Help way earlier! How Australia can transform child justice to improve safety and wellbeing*.⁴⁴ The Commissioner set out important priorities for coordinated national reform including a National Taskforce for reform of child justice systems, a Cabinet Minister for Children, a Ministerial Council for Child Wellbeing reporting to National Cabinet, and the implementation of treaty obligations concerning children into domestic law.

Australia's reservation to article 37(c) of the CRC, which requires children to be separated from adults in prison unless it is in the child's best interests not to do so,

43 Law Council of Australia and Australian Medical Association, [Minimum Age of Criminal Responsibility](#) (Policy Statement, December 2019).

44 Australian Human Rights Commission, ['Help way earlier!' How Australia can transform child justice to improve safety and wellbeing](#) (Report, June 2024).

is a barrier to full implementation of the treaty and should be withdrawn. The UN Committee on the Rights of the Child has also recommended withdrawal of this reservation,⁴⁵ along with ratifying the *Optional Protocol to the Convention on the Rights of the Child on a communications procedure* for children regarding potential violations of the rights guaranteed to them under the CRC.⁴⁶

An intergovernmental agreement that implements Australia's commitments under the Optional Protocol on the Convention Against Torture (OPCAT) must also be reached.

The position of children under Commonwealth criminal laws

Section 20C of the *Crimes Act 1914* (Cth) (**Crimes Act**) provides that a child or young person who, in a state or territory, is charged with or convicted of an offence against a law of the Commonwealth may be tried, punished, or otherwise dealt with as if the offence were an offence against a law of the state or territory.

The Law Council is concerned by the potential for inconsistent outcomes for children prosecuted for Commonwealth

offences, including for sentencing. This concern is exacerbated by recent amendments to sentencing principles for children in some jurisdictions (for example, Queensland has removed the principle of detention as a last resort).⁴⁷

The Australian Law Reform Commission (ALRC) has previously recommended greater consistency of approach in sentencing young federal offenders.⁴⁸ To this end, the Law Council supports the ALRC's outstanding recommendation that federal minimum standards should be developed to ensure the adequacy of laws and practices with respect to the sentencing, administration and release of young federal offenders.⁴⁹

The Law Council has raised repeated concerns with the extent to which new or amended federal offences may apply to minors, especially those relating to online behaviour and activities, and the role of the Commonwealth criminal justice system in responding to matters such as youth radicalisation.⁵⁰ A holistic review of how children are interacting with Commonwealth offences is required.

45 United Nations Committee on the Rights of the Child, [Concluding observations on the combined fifth and sixth periodic reports of Australia](#) (Publication CRC/C/AUS/CO/5-6, 1 November 2019).

46 United Nations, [Optional Protocol to the Convention on the Rights of the Child on a communications procedure](#) (General Assembly resolution A/RES/66/138, adopted 19 December 2011).

47 *Making Queensland Safer Act 2024* (Qld), s 15, amending *Youth Justice Act 1992* (Qld), s 150. This is contrary to Australia's relevant obligation under article 37(b) of the CRC.

48 Australian Law Reform Commission, [Same Crime, Same Time: Sentencing for Federal Offenders](#) (Report No 103, April 2006), 637-638.

49 Ibid, Rec 27-1.

50 See, eg, Law Council of Australia, Submission to the Senate Legal and Constitutional Affairs Committee, Parliament of Australia, [Criminal Code Amendment \(Hate Crimes\) Bill 2024](#) (29 November 2024). The Law Council recommended that new offences contained in the Bill should not apply to minors.

The Law Council calls for a commitment to:

- Lead and coordinate a national response to child justice that is evidence-based and consistent with Australia's international human rights obligations.
- Implement the overarching recommendations of the National Children's Commissioner's *Help Way Earlier!* Report including by:
 - establishing a National Taskforce for reform of child justice systems;
 - appointing a Cabinet Minister for Children;
 - establishing a Ministerial Council for Child Wellbeing reporting to National Cabinet; and
 - incorporating Australia's obligations under the CRC into domestic law.
- Raise the MACR at the federal level from 10 to 14, for all offences, without exception.
- Withdraw Australia's reservation to article 37(c) of the CRC.
- Ratify the *Optional Protocol to the Convention on the Rights of the Child on a communications procedure*.
- Implement Australia's commitments under the OPCAT by fostering and contributing to an intergovernmental agreement on funding with states and territories in relation to a National Preventive Mechanism, to strengthen the protection of young people deprived of their liberty.
- Review the operation of section 20C of the Crimes Act.
- Develop federal minimum standards to ensure the adequacy of laws and practices with respect to the sentencing, administration and release of young federal offenders. These should reflect the principles that the well-being of the young person shall be a guiding consideration; and detention should be used as a measure of last resort, and only for the shortest appropriate period.
- Review whether Commonwealth offences apply to children more generally in an appropriate manner and with appropriate safeguards.

Federal human rights response

Federal human rights framework

Every day many members of the legal profession around Australia, represent persons who have had their human rights breached. All Australians should have a means to seek an effective remedy for such breaches.

However, our federal legal framework fails to guarantee adequate protection of fundamental human rights. Australia is the only Western democracy without some form of a charter of rights at the national level. Many Australians would not know that—unlike elsewhere around the world—their human rights are backed by few Constitutional or statutory guarantees.

Australia's patchwork of laws protects only limited rights, with notable gaps and inadequate protections. We also lack a framework to resolve tensions about how intersecting human rights should be respected in national debates.

As recognised by the Parliamentary Joint Committee on Human Rights, if a federal Human Rights Act were in place, Parliament would need to expressly consider human rights when making laws.⁵¹ In addition, Commonwealth public authorities would need to consider rights when making decisions and act compatibly with those rights (unless Parliament directs them otherwise).

A federal Human Rights Act would drive a human rights culture within the Australian Government, so that public servants have

a clear framework to consider and balance the rights and freedoms of everyday people when making decisions and developing laws and policies that affect us all. At present, there is no framework for this kind of rights consideration, and as a result fundamental rights are often sidelined when new legislation is introduced.

These reforms must be complemented by broader human rights reforms, so that Australians know which of our rights are protected in law, know how they can obtain remedies for any breaches, and trust that their government is taking their rights into account in everything it does.

Modern slavery and the Role of Australian Business

While we welcome the recent establishment of an independent Australian Anti-Slavery Commissioner, more work remains to strengthen corporate modern slavery responses and increase regulatory oversight to ensure compliance. Professor John McMillan's outstanding review report recommendations about the *Modern Slavery Act 2018* (Cth) should be implemented.⁵² These include a stronger due diligence system requiring entities to take effective action to identify, assess and address modern slavery risks, civil penalties for non-compliance with reporting requirements in certain circumstances, and a lower reporting threshold for entities.

51 Parliamentary Joint Committee on Human Rights, [Inquiry into Australia's Human Rights Framework](#) (Report, May 2024).

52 John McMillan, [Report of the statutory review of the Modern Slavery Act 2018 \(Cth\): The first three years](#) (25 May 2023).



More broadly, a National Action Plan on Business and Human Rights would help to address other human rights risks associated with business operations and value chains.

Discrimination

Many people in the Australian community experience discrimination, and the notion of substantive equality remains out of reach. The Law Council supports reforms to the Commonwealth anti-discrimination regime that make it easier to access and understand, improve its capacity to address all forms of discrimination, promote substantive equality, and implement Australia's international obligations in this area. Across this framework, there is a need for greater consistency and accessibility, to simplify the existing provisions, reduce regulatory burdens and address key protection gaps.

However, this should not occur at the expense of lowering existing protections in the framework that are based on Australia's international obligations.

Every day many members of the legal profession around Australia, represent persons who have had their human rights breached. All Australians should have a means to seek an effective remedy for such breaches. However, our federal legal framework fails to guarantee adequate protection of fundamental human rights.



The Law Council calls for a commitment to:

- Implement the Parliamentary Joint Committee on Human Rights' recommendations for a new, stronger Human Rights Framework including:
 - a federal Human Rights Act;
 - a new federal human rights education program;
 - stronger requirements for public servants to fully consider human rights in developing legislation and policies;
 - a strengthened parliamentary scrutiny regime;
 - reviewing Australia's legislation, policies and practices for compliance with human rights; and
 - measures to monitor progress on human rights.
- Implement the outstanding recommendations of the McMillan review of the *Modern Slavery Act 2018* (Cth), particularly for a stronger due diligence system, civil penalties for non-compliance and lower reporting thresholds.
- Adopt a National Action Plan on Business and Human Rights.
- Pursue greater consistency and accessibility across Australia's federal anti-discrimination law framework, to simplify the existing provisions, reduce regulatory burdens and address key protection gaps.

Vulnerable Australians

Older persons

The abuse of older people can take many forms, such as physical, psychological, social and domestic, sexual, financial and neglect. It affects some of the most vulnerable members of our community.

Financial abuse is one of the most common forms of abuse of older people and often occurs in conjunction with other forms of abuse. To reduce this risk, the Law Council supports the development of nationally consistent Enduring Power of Attorney (EPOA) laws and has developed model EPOA provisions as a starting point for reform.⁵³

The Law Council welcomed this issue being included on the Standing Council of Attorneys-General agenda and consultation on options to achieve national consistency.⁵⁴ However, subsequent progress is unclear and this work needs to be prioritised.

Broader forms of abuse of older people must also be addressed through a comprehensive, well-resourced *National Plan to End the Abuse and Mistreatment of Older People 2024-2034*, which is under active consideration. Older persons, including in aged care, must have legal recourse to protect them from abuse, whether perpetrated by care providers or fellow residents. Specialist legal assistance services must be funded to support older persons to uphold their rights.

The Law Council also calls for reform of the superannuation death benefit framework by requiring that all superannuation death benefits form part of the estate of a deceased person, except where that person has made a binding death benefit nomination. This would provide greater certainty and autonomy for all members of superannuation funds in their succession planning. The ALRC has recommended that relevant laws be reviewed in relation to death benefit nominations.⁵⁵

The abuse of older people can take many forms, such as physical, psychological, social and domestic, sexual, financial and neglect. It affects some of the most vulnerable members of our community. Financial abuse is one of the most common forms of abuse of older people and often occurs in conjunction with other forms of abuse.

53 Law Council of Australia, [National Roundtable - Enduring Power of Attorney Law Reforms - Communiqué](#) (Communiqué, 6 August 2021).

54 Law Council of Australia, [Achieving Greater Consistency in Laws for Financial Enduring Powers of Attorney](#), (Submission, 13 December 2023).

55 Australian Law Reform Commission, [Elder Abuse - A National Legal Response](#) (Report No 131, 14 June 2017), Rec 7.1, concerning the *Superannuation Industry (Supervision) Act 1993* (Cth) and regulations.

Violence, abuse, neglect and exploitation of people with disability

The final report of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability made 222 recommendations to improve the inclusion of people with disability through changes to laws, policies, structures and practices.⁵⁶ The Australian Government has accepted 13 of 172 recommendations that fall within its remit of responsibility or shared responsibility, and another 117 recommendations in principle.⁵⁷

The Law Council calls for action to realise these commitments, including in the areas of anti-discrimination law, and implementing disability rights as part of a federal Human Rights Act, protecting the rights of persons with disability in detention and/or interacting with the justice system, reviewing national principles relating to unfitness to plead,⁵⁸ and resourcing specialised legal assistance services.

The Law Council calls for a commitment to:

- Outline a plan to achieving greater national consistency of EPOA laws under the Standing Council of Attorneys-General agenda.
- Simplify and improve the superannuation death benefits framework requiring that all superannuation death benefits form part of the estate of a deceased person, except where that person has made a binding death benefit nomination.
- Finalise, implement and properly resource the new *National Plan to End the Abuse and Mistreatment of Older People 2024-2034*, including additional funding for specialist legal services.
- Implement key recommendations of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability falling within the Commonwealth's primary or shared responsibility.

56 [Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability](#) (Final Report – Executive Summary, Our vision for an inclusive Australia and Recommendations, September 2023).

57 Australian Government, [Australian Government Response to the Disability Royal Commission](#) (July 2024).

58 Attorney-General's Department, [National Statement of Principles Relating to Persons Unfit to Plead or Found Not Guilty by Reason of Cognitive or Mental Health Impairment](#) (9 August 2019).

Family law and family violence

The Australian family law system must provide multiple avenues by which a timely, efficient and cost-effective resolution of disputes can occur, and protection for the vulnerable and for victim-survivors of family violence.

Family Violence and Cross-Examination of Parties Scheme

The *Family Violence and Cross-Examination of Parties Scheme* (the **Scheme**), under section 102NA of the Family Law Act, prevents victim-survivors of family violence from being personally cross-examined by the alleged perpetrator of that violence, and funds lawyers to undertake that cross-examination. The Scheme is already stretched to its limits.⁵⁹ With the passage of the *Family Law Amendment Act 2024* (Cth)—to take effect in June 2025—significantly more funding will be needed to accommodate the increased number of matters where the Scheme will be called upon, due to the increased duration of cross-examination at trial.

There are ongoing practical and procedural issues with the Scheme's operation. These relate to the availability of barristers and solicitors willing to accept work under the Scheme, given the minimal funds provided; the lack of clarity over the scope of services that should

be provided; and the potential misuse of the ban on direct cross-examination by self-represented parties who are the alleged perpetrators of family violence.⁶⁰ Experience also suggests that significant cost and delay may be caused to alleged victim-survivors when alleged perpetrators misuse the Scheme.

Given these challenges, a review of the operation of section 102NA of the Family Law Act should be conducted. This review should consider the Scheme's funding arrangements, who can access the Scheme, guidance for lawyers when a grant ends, and restricting the potential misuse of the Scheme to facilitate systems abuse.

Current resourcing of Indigenous Family Liaison Officers only supports approximately 50 per cent of the Court filings involving a First Nations litigant or child.

⁵⁹ See Law Council of Australia, Submission to the Senate Legal and Constitutional Affairs Legislation Committee, Parliament of Australia, [Family Law Amendment Bill 2024](#) (9 October 2024) 11-13.

⁶⁰ Ibid.

Resourcing the appointment of Independent Children's Lawyers

There is a risk of family violence in more than 80 per cent of family law proceedings.⁶¹ ICLs assist the court determine what is in a child's best interest and help to ensure the safety and wellbeing of children in this context.

Following recent changes to the Family Law Act parenting provisions,⁶² Legal Aid Commissions are already seeing an increased demand for ICLs, with some early estimates indicating an increase of almost 50 per cent.⁶³ Yet, the grants for funding of ICL appointments are limited, and practitioners acting as ICLs are not appropriately remunerated, which impacts their ability to undertake this work. The limited availability of ICLs nationally, alongside the recently increased demand, means that the ICL Program is reaching crisis point.

The Independent Review of the NLAP estimated that over \$80 million per annum is required to ensure that private practitioners can take on work as ICLs.⁶⁴

Improving the security of facilities in regional registries

Many of the FCFCOA's key regional registries are located in commercial lease premises rather than government-owned buildings. The court facilities within these buildings are aged and upgrades are needed. Improvements needed include constructing saferooms for victims of family violence during court events, and measures to ensure safety for judges and court staff. There are real risks to the safety of judges, staff, practitioners, litigants and children if these improvements are not made.

Increasing the number of Indigenous Family Liaison Officers

The Law Council understands that current resourcing for Indigenous Family Liaison Officers can only support about 50 per cent of the filings involving a First Nations litigant or child. Filings involving First Nations parties are increasing in the FCFCOA. Extending this funding—and making it ongoing—will help the FCFCOA to support First Nations families.

61 FCFCOA, [Federal Circuit and Family Court of Australia launches major family law reform to improve safety and support for children and families](#) (Media Release, 5 December 2022).

62 FCFCOA, [Family law changes from 6 May 2024](#) (Web Page, 22 May 2024).

63 National Legal Aid, [Independent Children's Lawyer Program at Crisis Point](#) (29 October 2024).

64 Warren Mundy, [Independent Review of the National Legal Assistance Partnership 2020-25](#) (Final Report, March 2024) 141, rec 19.



The Law Council calls for a commitment to:

- Review the operation of section 102NA of the Family Law Act, to support the viability of the Family Violence and Cross-Examination of Parties Scheme.
- Provide more than \$80 million per annum of funding, as estimated by the Independent Review of the NLAP, to support access to the National Independent Children's Lawyer Program.
- Upgrade court facilities to ensure an appropriately safe environment for judges, staff, practitioners, litigants and children.
- Expand funding for Indigenous Family Liaison Officers to ensure all court filings involving a First Nations litigant or child can be appropriately supported.

Migration law and policies

While the Law Council acknowledges recent important reforms to some areas of migration law and the overall program,⁶⁵ the Law Council remains greatly concerned about several aspects of Australia's immigration laws and policy.

Integrity of migration reform processes

The Law Council has been dismayed by the recent rushed passage of several migration laws,⁶⁶ which have undermined rule of law principles, as well as Australia's obligations under core international human rights law treaties including the *1951 Refugee Convention and its 1967 Protocol*.⁶⁷

The scrutiny and debate of these laws in Parliament was sorely wanting, and public consultation processes or stakeholder engagement in their development was almost non-existent. The laws lack safeguards and their combined effect is disproportionate, unfair and risks non-compliance with Australia's *non-refoulement* obligations, which means people could be sent to countries where they face danger or even death. These laws should be subject to independent review and an independent migration law monitor role (like the Independent National Security Legislation Monitor) established to avoid overreach and political reaction.

The Law Council calls for a commitment to:

- Improve migration reform processes, particularly for persons who are seeking asylum, in immigration detention, subject to visa cancellation and refusal decisions, or subject to removal from Australia. This requires public and transparent consultation, stakeholder engagement, reasonable timeframes and adherence to Australia's treaty obligations, rule of law principles and constitutional validity.
- Independently review recently passed migration laws raising critical human rights and rule of law concerns.
- Establish and fully resource an independent migration law monitor.

⁶⁵ See, eg, the abolition of temporary protection visas, the removal of the fast-track process and the Immigration Assessment Authority, reforms to the Administrative Appeals Tribunal (now the Administrative Review Tribunal), the more rigorous selection and appointment of qualified Tribunal members and judicial officers to hear migration matters, and increased funding to assist with the processing of protection visa applications.

⁶⁶ Law Council, [Migration Bills are Bad Law](#) (Media Statement, 27 November 2024).

⁶⁷ [Convention Relating to the Status of Refugees](#), opened for signature 28 July 1951, 189 UNTS 150 (entered into force 22 April 1954); [Protocol Relating to the Status of Refugees](#), opened for signature 31 January 1967, 606 UNTS 267 (entered into force 4 October 1967).



Broader migration reforms

The Law Council further calls for reforms in the following areas of migration law.

The Law Council calls for a commitment to:

- Reform 'character test' visa cancellation and refusal powers in the *Migration Act 1958* (Cth) with a view to: narrowing their scope to address more serious offending; limiting open-ended Ministerial discretionary powers; respecting the role of the Administrative Review Tribunal; revisiting mandatory/automatic cancellations; and increasing procedural fairness.
- Reform asylum-related laws and policies to end those incompatible with Australia's international human rights and refugee law obligations, including boat turnbacks, offshore processing/detention and inconsistent protection status determination, or that which involves discrimination of any kind (including based on mode of arrival).
- Pursue long-term, durable solutions for all refugees and asylum seekers who are or have been subject to Australia's offshore processing policy, in line with Australia's relevant international obligations.
- Provide a permanent visa pathway for the remaining 'legacy caseload' including Nauru and Manus Island Medivac transferees.
- Introduce fair bridging visa reforms to grant work rights to avoid financial hardship and associated health risks.
- Improve access to partner visas and remove the partner program from permanent migration program numbers.
- Extend family violence protection reforms beyond existing cohorts to all temporary visa holders experiencing family violence.
- Review and continue the reform of the student, skilled and employer-sponsored visa programs to ensure they remain flexible, avoid unnecessary delays in processing and meet the labour market needs of both metropolitan and regional Australia and the educational sector.

Regulation of artificial intelligence technology

Australia's existing legal and regulatory frameworks are evolving in response to the growing impact of AI. The use of AI technology presents opportunities, but there are also challenges in its rapid development and potential risks.

While Australia's frameworks can manage certain aspects of AI, gaps need to be addressed to ensure comprehensive, forward-thinking regulation. Rather than regulating AI via a comprehensive 'AI Act', a multifaceted approach should be adopted that enhances current regulation and reflects the principles and elements set out in our recent submission on introducing mandatory guardrails for AI in high-risk settings.⁶⁸

The areas in which existing laws may be inadequate must be identified and addressed. Australia's legal and regulatory frameworks should be flexible and capable of responding to the unique risks posed by AI—especially in 'high-risk' settings, where failures or errors can lead to significant harm or adverse consequences. Any industry-specific legislation should be proportionate and not duplicative.

A key area that requires enhanced regulation and transparency, as identified by the Robodebt Royal Commission Final Report, is the use of automated decision-making (ADM).⁶⁹ The Royal Commission called for the consideration of legislation to introduce a consistent legislative framework in which automation in government services can operate, and a body to monitor and audit automated decision-making.⁷⁰ The Australian Government accepted these recommendations.⁷¹ The Law Council has welcomed subsequent consideration of these matters and calls for appropriate guardrails as recommended.⁷²

Any framework developed to respond to AI or ADM, regulatory or otherwise, must be subject to shorter, accelerated review cycles than would ordinarily apply. Given the rapid development of AI, the typical statutory review period of five years will be insufficient.

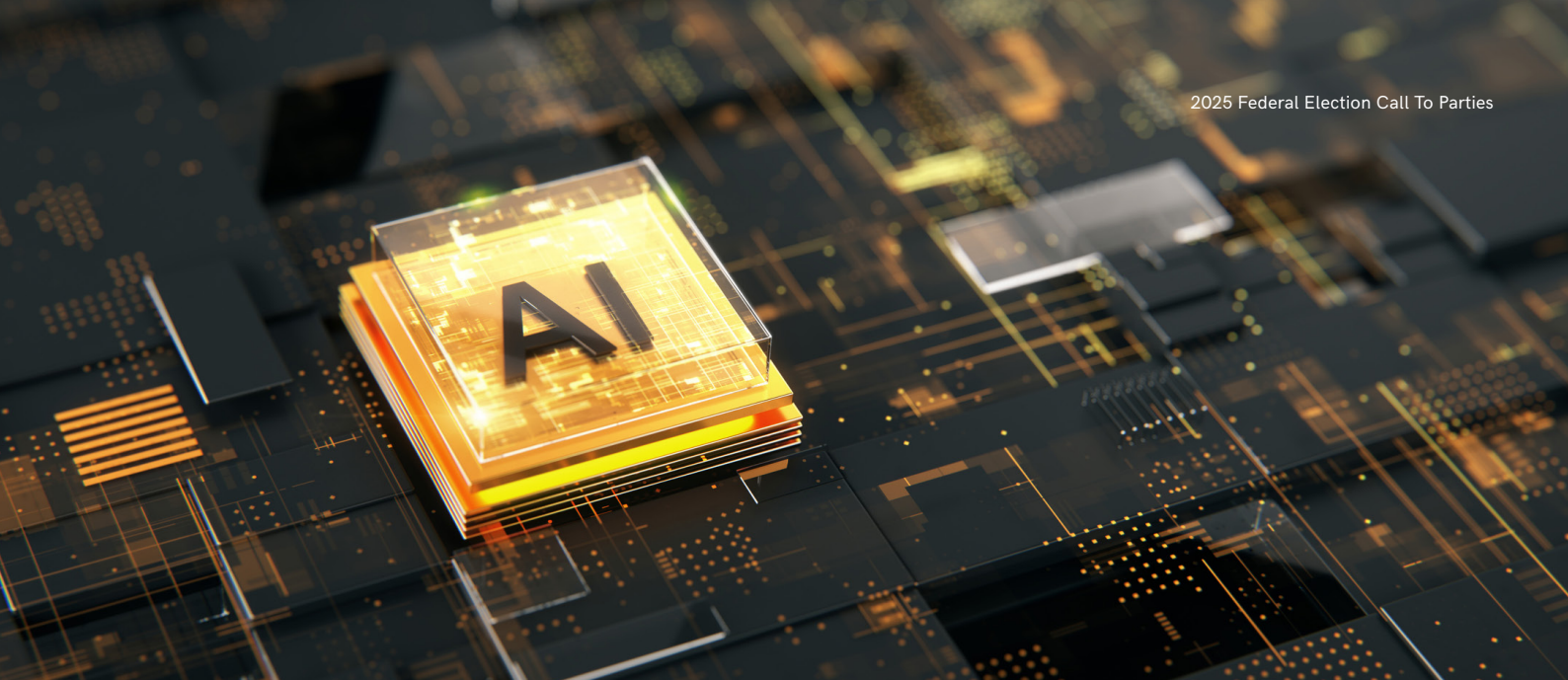
68 Law Council of Australia, Submission to the Department of Industry, Science and Resources, [Introducing mandatory guardrails for AI in high-risk settings: Proposals paper](#) (9 October 2024) 15 [63].

69 [Royal Commission into the Robodebt Scheme](#) (Final Report, 7 July 2023).

70 Ibid, recs 17.1 and 17.2.

71 Australian Government, [Government Response: Royal Commission into the Robodebt Scheme](#) (Report, November 2023) 21-22.

72 See Law Council of Australia, Submission to the Attorney-General's Department, [Use of Automated Decision-making by Government: Consultation Paper](#) (24 January 2025) for our broader positions on this issue.



The Law Council calls for a commitment to:

- Identify and address areas where existing laws may be inadequate to assure safe, responsible and secure applications of AI and investment in uplifting Australia's AI capability.
- Ensure any applicable framework, regulatory response or otherwise, is flexible, proportionate, targeted, and not duplicative.
- Introduce legislative reforms to introduce a consistent, transparent framework for ADM in service delivery by Commonwealth agencies.
- Ensure any AI or ADM framework, regulatory or otherwise, is subject to shorter, accelerated review cycles than would ordinarily apply.

Privacy reforms

Strong privacy laws and protections are critical to building public trust and confidence in the digital economy. Privacy and data law reform should promote, to the greatest extent, consistency and predictability in the law, while remaining principles-based and technologically neutral. Modernising and strengthening the *Privacy Act 1988* (Cth) is of critical ongoing importance.

The development and adoption of new technologies, especially technologies utilising machine learning and AI systems, involves collecting, using, generating and otherwise processing very large quantities of data. Much of that data is personal information and already regulated by privacy laws in Australia,⁷³ and many of our trading partners.⁷⁴ It is important that this is expressly reflected in our approach to the adoption of new technologies.

In 2023, the Attorney-General's Department released its *Privacy Act Review Report*, containing 116 proposals to make the Privacy Act fit-for-purpose to protect privacy in the digital age.⁷⁵ In its Response to that Report, the Australian Government agreed with 38 proposals, agreed in principle with a further 68, and noted the remaining ten.⁷⁶

The *Privacy and Other Legislation Amendment Act 2024* (Cth) progressed 23 of the agreed-to proposals.

Consultation on the second tranche of reforms was described, in September 2024, as 'imminent'.⁷⁷ Further reforms are welcome, noting that clear details about what proposals will be addressed in each tranche of reform will promote certainty for the many sectors that will be impacted by these significant changes.

Given the high-level nature of the various proposals in the *Privacy Act Review Report*, early, transparent and reasonable consultation with civil society, regulators, and other interested stakeholders on exposure draft legislation will be critical. In the context of this ambitious reform agenda, the Office of the Australian Information Commissioner must be provided with sufficient resourcing to meet its increasing responsibilities.

Privacy impacts must be addressed when implementing new policy and law reforms, particularly surveillance and data-sharing initiatives, and sufficient safeguards included for all dealings with, and the use and retention of, personal information. Government digital identity systems should prioritise reliability, information security, privacy and consumer safeguards, and minimise burdens on business where verification of identity is required.

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- 73 See Office of the Australian Information Commissioner, [Guidance on privacy and developing and training generative AI models](#) (Webpage, 23 October 2024).
- 74 See European Parliament, [The Impact of the General Data Protection Regulation \(GDPR\) on artificial intelligence](#) (Study by the European Parliamentary Research Service, June 2020).
- 75 Attorney-General's Department, [Privacy Act Review](#) (Report, 2022).
- 76 Attorney-General's Department, [Government response Privacy Act Review Report](#) (Report, 2023).
- 77 Commonwealth, *Parliamentary Debates*, House of Representatives, 12 September 2024, 25 (Mark Dreyfus, Attorney-General).



The Law Council calls for a commitment to:

- Provide a roadmap for implementing the remaining recommendations of the Privacy Act Review Report that have been agreed or agreed in principle.
- Conduct early, transparent and reasonable consultation on exposure draft legislation in this area to minimise the potential for unintended consequences.
- Provide sufficient ongoing resourcing to the Office of the Australian Information Commissioner so that it is equipped to meet its increasing responsibilities.
- Consider privacy impacts when implementing new policy and legislative initiatives, and provide sufficient safeguards for all dealings with personal information, including its use and retention.
- Ensure privacy legislation, including pending reforms, are principles-based, technologically neutral, and clear.
- Ensure government digital identity systems prioritise reliability, information security, privacy and consumer safeguards, and minimise burdens on business.

Regulation of the legal profession

There has been a marked increase in federal consultations on expanding regulation of service providers for federal law and policy measures. These proposals inevitably raise the prospect of legal practitioners coming under multiple federal regulatory reform proposals. This is despite the fact that there is already an existing comprehensive and stringent legal profession national regulatory system in place.

Recent experience has unfortunately suggested that there may be little awareness about the existing comprehensive and stringent profession national regulatory system, or an appreciation of the complex problems that arise from dual regulation of the legal profession and provision of legal services.

It is important to recognise that:

- Legal practitioners have a unique complex of duties and responsibilities to their clients and the courts, derived from their unique role in the administration of justice. They therefore stand apart from all other professions and service providers. Their role is distinct from that of advisers, agents and other service industries.
- In the Australian federation, regulation of the legal profession is a state responsibility, not a plenary Commonwealth responsibility. The legal profession in Australia is comprehensively regulated under a national regulatory system established and maintained by the states and territories.

Commonwealth reform proposals that directly affect the legal profession should be developed in consultation with the states and territories.

To aid broader understanding, the Law Council has recently released a *Lawyer Regulation in Australia* (2024) overview of the regulatory system.⁷⁸ It calls for this system to be understood and respected in federal regulatory reform proposals, and for proposals that may result in dual regulation to be avoided.

Anti-Money Laundering and Counter-Terrorism Financing Regime

The Anti-Money Laundering and Counter-Terrorism Financing Amendment Act 2024 (Cth) (**AML-CTF Amendments**) extended the scope of AML-CTF obligations to the legal profession. The Law Council is concerned about the impact of these regulatory changes on the legal profession, especially as the vast majority of legal practices are sole traders or small-to medium-sized businesses. The costs of complying with these new obligations will be unduly high, especially for sole practitioners and small-and medium-sized firms. This is, in turn, likely to impact on access to justice.

The Law Council is also concerned that some of the AML-CTF Amendments address circumstances that are very low risk by imposing disproportionately onerous compliance obligations.

78 Law Council of Australia, [Lawyer Regulation in Australia: An overview](#) (21 November 2024).

Some of these amendments are likely to impact on access to justice for Australians in need of legal help, or have unintended consequences.

The Law Council calls upon all parties to work closely with us to monitor, evaluate and mitigate these impacts on the legal profession and on Australians' access to justice, including by taking active steps to reduce compliance costs, and to commit to an independent, full review of those costs and any access to justice impacts in 2028-29.

The costs of complying with these new obligations will be unduly high, especially for sole practitioners and small-and medium-sized firms.

The Law Council calls for a commitment to:

- Encourage general awareness across Commonwealth portfolios of the comprehensive and stringent legal profession national regulatory system already in place.
- Avoid reform proposals that would have the effect of:
 - imposing dual regulation on the legal profession, or the Commonwealth and states and territories; or
 - creating difficulties for the legal profession in meeting their professional and ethical obligations.
- Consult with the states and territories on any Commonwealth reform proposals that directly affect the legal profession.
- Work closely with the Law Council to monitor, evaluate and mitigate the impacts of the AML-CTF Amendments on the legal profession, including by taking active steps to reduce compliance costs.
- Work closely with the Law Council to address (including through legislative amendment) those of the AML-CTF Amendments that impose disproportionately onerous obligations, impact access to justice for Australians in need, or have unintended consequences.
- Conduct an independent, full review of compliance costs and access to justice impacts of the AML-CTF Amendments in 2028-29.

Client legal privilege

The doctrine of client legal privilege is a fundamental common law immunity, developed by the judicial arm of government and in many respects entrenched by the legislative arm of government. It preserves the confidentiality of communications seeking and obtaining legal advice between clients and their lawyers.

This immunity—which belongs to the client—recognises that administration of the law and the system of administration of justice is a combined function of the courts and the legal profession. The receipt of unfettered and comprehensive legal advice advances the rule of law, as it assists clients in conducting their personal and business affairs within the law.

The immunity is there to ensure that anyone can go to a lawyer and provide frank and full disclosure in a secure setting to obtain the legal advice that they need. The doctrine has been developed as part of a balancing exercise about what is in the public interest.

This balance has been struck in favour of preserving and protecting the security of the communication setting and thus the privileged information rather than full public disclosure. Without the privilege, individuals would be dissuaded from seeking legal advice, or being candid in communications in the process of getting that advice.

Legal practitioners have professional obligations to protect the confidentiality of their client's information, including privileged communications, from disclosure except in certain limited circumstances. Importantly, the immunity does not protect a communication made in the furtherance of a fraud, crime or other improper purposes.

Where any contention arises between an individual or organisation and a federal regulator about client legal privilege, client legal privilege should always be respected and the courts should be the ultimate decision maker.

The Law Council calls for a commitment to:

- Promote awareness and understanding across Government and Parliament of the vital public interest purpose that client legal privilege serves.
- Ensure that client legal privilege is respected and preserved in practice as well as in form.
- Refrain from creating laws or policies that would abrogate or affect client legal privilege, and fully consult the legal profession on any such proposals.

Corporations and financial services standing law reform advisory body

The dynamic nature of corporations and markets means that the need for reform and legal regeneration in these areas is ongoing.

Between 1989 and 2014, the Corporations and Markets Advisory Committee (CAMAC) operated at minimal cost to provide apolitical advice and recommendations to the Australian Government about matters relating to corporations and financial services law, administration and practice. The CAMAC was an independent, transparent and research-based reform body constituted to facilitate appropriate input from business, market and legal sources.

The CAMAC structure is a proven, effective way of securing expert advice from independent sources, with expert input received during the development of reform proposals, rather than by way of submissions and advocacy after a reform proposal is released for public consideration, thereby enhancing the efficiency of the reform process.

The Law Council considers that the re-establishment of a standing apolitical law reform advisory body that is akin to the CAMAC would, among other things:

- enhance economic management at the government level and research-based corporate law reform;
- reduce red tape and unnecessary costs;
- supplement the resources and expertise within Treasury;
- provide expert independent consideration that is outside the constraints of the political and electoral cycle; and
- assist in moving forward with much-needed reform.⁷⁹

The Law Council calls for a commitment to:

- Re-establish a standing apolitical law reform advisory body (akin to the former Corporations and Markets Advisory Committee) to provide advice and recommendations to government about matters relating to corporations and financial services law, administration and practice.

⁷⁹ Letter from the Business Law Section of the Law Council of Australia to Senator the Hon Mathias Cormann, Minister for Finance and Hon Joe Hockey MP, Treasurer, [Commonwealth budget proposal to abolish corporations and markets law reform body](#) (11 June 2014).

The environment and climate change

Reform of Australia's environmental legislation

As identified by the 2020 Independent Review (the 'Samuel Review'), the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) is outdated and requires significant reform.⁸⁰ However, attempts by the Australian Government to reform the EPBC Act as outlined in its 'Nature Positive Plan' have stalled. The only legislative measure to have passed—the introduction of the Nature Repair Market—is yet to have any meaningful impact as the administrative and regulatory architecture created by the legislation is still being developed. Proposed legislation to create a federal Environment Protection Authority and improve Australia's data collection and information ability was withdrawn from the Australian Parliament.

Additionally, progress appears to have floundered on the key recommendation of the Samuel Review—the development of National Environmental Standards.

The extent of environmental deterioration and biodiversity loss in Australia is of significant concern, and urgent and fundamental reform to Australia's legal frameworks is required to halt and reverse this course. The Commonwealth must demonstrate leadership on biodiversity

conservation and environmental protection and ensure that Australia is in a position to meet its international commitments and to protect its own eco-systems.

Climate change mitigation and adaptation

As outlined in the Law Council's Climate Change Policy, the impacts of climate change and its far-reaching consequences will continue to shape domestic and international legal frameworks into the future.⁸¹

Australia's regulatory response must offer long-term solutions with higher levels of ambition and predictability in order to comply with Australia's international obligations—including under the Paris Agreement⁸²—and enable government agencies and businesses across all sectors of Australia's economy to best manage the physical, economic and other transition risks posed by the changing climate, and empower business and civil society to make decisions within a decarbonising economy.

80 Graeme Samuel, [Independent Review of the EPBC Act](#) (Final Report, October 2020).

81 Law Council of Australia, [Climate Change Policy](#) (Policy Statement, 27 November 2021).

82 [Paris Agreement](#), opened for signature 22 April 2016 [2016] ATS 24 (entered into force 4 November 2016) (Paris Agreement). Australia ratified the Paris Agreement on 10 November 2016: Statement by the Hon Greg Hunt MP, [National Statement, Signing of the Paris Climate Change Agreement](#) (New York, 22 April 2016).



The Law Council calls for a commitment to:

- Implement improved law reform consultation processes to drive necessary substantive changes to Australia's national environmental protection and conservation law.
- Ensure that federal legal frameworks regarding adaptation and mitigation to climate change: fully implement Australia's international law obligations; give effect to rule of law principles (including to promote certainty and clarity); and provide a response that is fair and equitable, promotes public confidence and advances a just transition for affected communities.
- Ensure that Australian national energy policy is determined and managed based upon the best available scientific evidence about its likely impact on the environment and Australia's performance of its international obligations.

Supporting the rule of law and administration of justice in the Pacific

Australia has an important role to play in contributing to the realisation of Goal 16 of the United Nations *Sustainable Development Goals* in the Pacific: peace, justice and strong institutions.⁸³ The realisation of Goal 16 is in Australia's best interests, and consistent with Australia's *International Development Policy* which aims to build effective, accountable states, and enhance state and community resilience.⁸⁴

Many Pacific Island national strategies and development plans refer specifically to priorities and aspirations for the legal and justice sector, and to strengthening governance and legislative frameworks.

Legal professional associations play an important role in supporting the realisation of these policy objectives, including by monitoring the operation of the justice system, the implementation of legislation and the exercise of Executive power; providing input on law reform and policy; advising on practical measures to improve the efficient operation of institutions and enhance access to justice; and participating in debate on matters of public interest.

In June 2024, the Law Council welcomed the commitment of the Australian Government to provide funding for the Pacific Islands Legal Information Institute (PacLII) for a period of three years.

PacLII provides a comprehensive and integrated system of public legal information for 20 Pacific Island jurisdictions. It is relied upon by governments, judiciaries, academics and students throughout the region. As an essential piece of legal infrastructure, it facilitates the administration of and access to justice, underpins the delivery of legal services, supports the development of Pacific jurisprudence, and promotes transparency, accountability and good governance in the Pacific.

Australia has an important role to play in contributing to the realisation of Goal 16 of the United Nations Sustainable Development Goals in the Pacific: peace, justice and strong institutions.

83 [Transforming our world: the 2030 Agenda for Sustainable Development](#), UN General Assembly, 25 September 2015, A/RES/70/1.

84 Department of Foreign Affairs and Trade, [Australia's International Development Policy](#) (August 2023).

The Law Council calls for a commitment to:

- Prioritise the provision of funding and other assistance to support the development of, and strengthen, independent legal professional associations in the South Pacific.
- Maintain support for the operation of PacLII through the University of the South Pacific.



Law Council

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