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# 2016-17 Federal Budget

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## Commonwealth Treasury

**5 February 2016**

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## Table of Contents

<b>Introduction</b> .....	<b>3</b>
<b>Funding for legal assistance services</b> .....	<b>3</b>
Productivity Commission recommendations .....	3
Legal Aid Commission funding.....	4
Aboriginal and Torres Strait Islander Legal Services .....	7
Community legal centres.....	8
Immigration Advice and Application Assistance Scheme .....	8
Family Violence Prevention Legal Services .....	8
<b>Federal courts and tribunals</b> .....	<b>9</b>
Family courts.....	9
Additional comments with respect to Aboriginal peoples in NSW .....	10
Federal Circuit Court – expanding general jurisdiction .....	10
Administrative Appeals Tribunal (AAT) .....	11
<b>Centre for Asia Pacific Pro Bono</b> .....	<b>12</b>
<b>Funding for statutory and government bodies</b> .....	<b>13</b>
Australian Human Rights Commission.....	13
<b>Parliamentary Joint Committee on Human Rights</b> .....	<b>13</b>
Australia’s engagement with United Nations human rights bodies .....	13
Office of the Australian Information Commissioner (OAIC).....	14
Compliance with the <i>Environmental Protection and Biodiversity Conservation Act</i> 1999.....	14
<b>Attachment A: Profile of the Law Council of Australia</b> .....	<b>15</b>

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## Introduction

1. The Law Council of Australia is pleased to provide the following submission in response to Treasury's request for submissions on the 2016/17 Federal Budget.
2. As outlined in **Attachment A**, the Law Council is the national peak body for the Australian legal profession.
3. The Law Council's submission primarily concerns access to justice, including funding for legal assistance services and for the federal courts and tribunals. Legal assistance services comprise the Legal Aid Commissions (LACs), Aboriginal and Torres Strait Islander Legal Services (ATSILS), Family Violence Prevention Legal Services (FVPLSs) and Community Legal Centres (CLCs).
4. The Law Council is also concerned about discontinuation of funding for the Centre for Asia-Pacific Pro Bono and funding to a number of statutory and government entities, including human rights oversight bodies, as well as information, privacy and environmental regulatory bodies.
5. The Law Council thanks Treasury for the opportunity to provide these brief comments and would be pleased to provide any further information required.

## Funding for legal assistance services

6. The Law Council submits that:
  - (a) funding for legal assistance services is grossly inadequate to meet demand; and
  - (b) unmet demand for legal assistance services has significant impacts on Commonwealth and State/Territory Government expenditure across a broad range of programs.
7. The Law Council further submits that the Commonwealth should:
  - (a) increase the Commonwealth's share of legal aid commission funding to 50 per cent with the States and Territories;
  - (b) contribute a further \$120 million to cover civil legal assistance, with the States and Territories contributing \$80 million, comprising a total of \$200 million, as recommended by the Productivity Commission in its 2014 Report on *Access to Justice Arrangements*;
  - (c) restore funding for CLCs and ATSILSs to engage in policy and advocacy work, as recommended by the Productivity Commission, and reverse funding cuts to those programs, which will take effect from 1 July 2017; and
  - (d) increase funding for ATSILSs, CLCs and FVPLSs to ensure equal funding for clients on the basis of services provided.

## Productivity Commission recommendations

8. The Productivity Commission recommended in its 2014 Report into Access to Justice Arrangements that:

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“To address the more pressing gaps in services, Australian, State and Territory Governments should provide additional funding for civil legal assistance services [of around] \$200 million.”<sup>1</sup>

9. The Commission further noted that

*“Given the dearth of data, and having regard to the pressing nature of service gaps, the Commission considers that an interim funding injection in the order of \$200 million — from the Australian, state and territory governments — is required per year. The Commonwealth’s contribution would be in the order of 60 per cent. This funding injection would enable legal assistance services providers to address the most pressing needs, including to:*

- *maintain existing frontline services of the LACs, CLCs and ATSILS that have a demonstrated benefit to the community and that have been affected by the recent funding decisions described above*
- *relax the means test applied by the LACs and so allow more households to be eligible to receive grants of legal aid*
- *provide grants of legal aid in areas of law where there is little assistance being currently provided, either by LACs or other legal assistance services.”*<sup>2</sup>

## **Legal Aid Commission funding**

10. Since 1997, the Commonwealth’s contribution to LAC funding has reduced dramatically, from around \$10.88 per capita in 1996-97 to around \$8.01 per capita (in real terms, adjusted for inflation and population increases), remaining largely static ever since.
11. To place this in perspective, until 1996-97, the Federal Government’s funding contributions to LACs accounted for 55 per cent of total funding, with the remaining 45 per cent covered by State grants and interest from public purpose funds. Following the introduction of the “Commonwealth-State divide” in 1997, the Commonwealth’s share of funding fell to around 35 per cent of total funding.
12. As illustrated in Figure 1, prepared by PricewaterhouseCoopers in June 2015, a substantial further decline in Commonwealth funding for LACs is projected over the foreword estimates. This funding decline is unacceptable and will have serious consequences for the availability of legal aid, the functioning and cost of the justice system as a whole and the corresponding demand for and cost of government services in a range of other essential areas, including health, social security and other community services.
13. For example, PwC has estimated that a \$1 cut in legal aid in fact costs the Australian Government \$1.60-\$2.25 in reduced efficiency of the courts alone.<sup>3</sup> This does not include additional costs involved with increased demand for mental health and other public health utilities, unemployment benefits and community programs relied upon by

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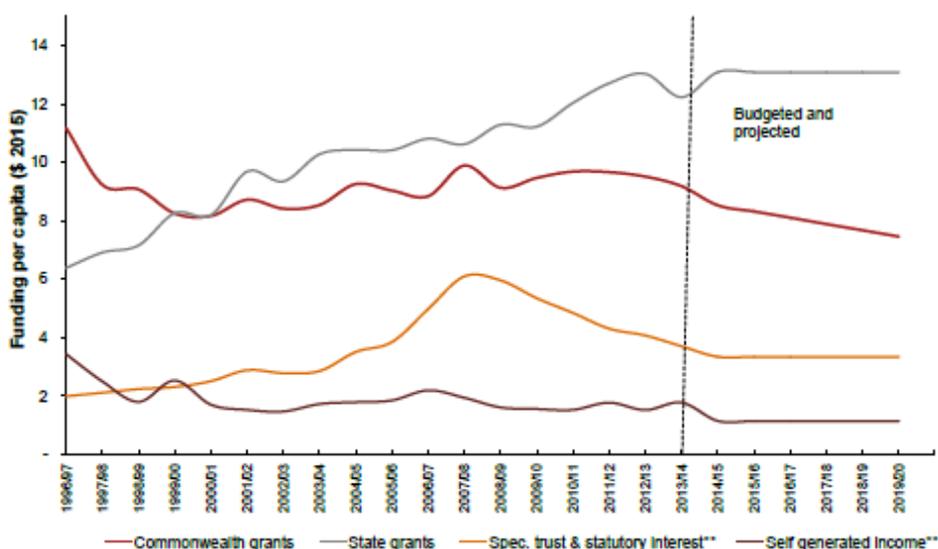
<sup>1</sup> Productivity Commission, *Access to Justice Arrangements*, Final Report, September 2014, Commonwealth of Australia, Recommendation 21.4.

<sup>2</sup> Ibid, 738-739.

<sup>3</sup> PricewaterhouseCoopers, 2009, PwC Report, *Legal Aid Funding: Current Challenges and the Opportunities for Cooperative Federalism*, Report prepared for National Legal Aid. See <http://www.lawcouncil.asn.au/lawcouncil/images/LCA-PDF/a-z-docs/fmsdownload099f.pdf>.

those whose lives are derailed by adverse justice outcomes or unmet legal need, which legal aid is proven to address.

**Figure 1 – Real funding of legal aid commissions per capita by source (excluding Commonwealth funding for Community Legal Centres (\$'000, 2015)**



Source: NLA statistics, ABS 6401.0 Consumer Price Index, ABS 3101.0 Australian Demographic Statistics, ABS 3202.0 Population Projections, 2014-15 Federal Budget, 2015-16 Federal Budget.

1. In 2014-15, Commonwealth funding is sourced from the 2014-15 Federal Budget, Budget Paper No. 3. Other sources are as per budgeted income from National Legal Aid.

2. From 2015-16 to 2018-19, Commonwealth funding is sourced from the 2015-16 Federal Budget, Budget Paper No. 3 and NPA

3. Commonwealth Funding in 2019-20 is sourced from the NPA.

\*\* These are considered state sources of funding

14. Table 1 sets out PWC’s actuarial estimate of the additional Federal funding required over the forward estimates to bring Federal expenditure on Legal Aid up to 50-50 with the States and Territories.

**Table 1 - Level of additional Commonwealth funding**

Financial Year	Cth input grants	State Input Grants	Level of additional funding required
2014-15	\$204.4 million	\$313.7 million	\$109.3 million
2015-16	\$208.0 million	\$323.8 million	\$115.9 million
2016-17	\$211.3 million	\$337.5 million	\$126.3 million
2017-18	\$214.2 million	\$351.7 million	\$137.5 million
2018-19	\$217.2 million	\$366.3 million	\$149.1 million
2019-20	\$219.9 million	\$381.5 million	\$161.5 million
Total			\$799.5 million

Source: NLA, RBA, ABS, 2014-15 Federal Budget, 2015-16 Federal Budget

Note: Numbers may not add due to rounding

15. Given the Federal funding position for Legal Aid has only deteriorated further since 2014-15, substantially more will be required to achieve the objective of funding parity over the forward estimates. In particular:

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- (a) Commonwealth expenditure under the 2015-16 budget for expensive Commonwealth criminal cases is expected to decline by almost \$1 million, despite significant expansion in Commonwealth law enforcement powers and prosecutions with respect to terrorism and related offences; and
    - (b) Increasing numbers of litigants in the family law and civil law jurisdictions of the courts are appearing unrepresented, due to the increasing unavailability of funding for civil and family law assistance.
  16. Whilst the Law Council does not accept the Commonwealth's position that it bears no responsibility for legally assisting those prosecuted under State and Territory laws (discussed further below), the Commonwealth is certainly not able to abrogate its responsibility to fund legal assistance for those affected by Commonwealth laws. Presently, the Commonwealth's funding allocation bears little relationship to legal need arising from Commonwealth prosecutions or matters under family and civil law, particularly those requiring judicial determination. However, the unavailability of legal aid for such matters directly affects Commonwealth Government expenditure and resource pressures in the federal courts and under government-funded health and community services programs, due to reduced efficiency of the federal justice system (as noted above) and the upscaling of legal problems, exacerbating issues that lead to unemployment, family breakdown, welfare dependency and drug and alcohol dependency, crime and a range of other social problems.
  17. Moreover, the suggestion that there is any natural "Commonwealth-State divide" in responsibility for legal assistance services is directly contradicted by the Commonwealth's acceptance of funding responsibility in areas such as public health and education. Similar to State-run public health and education institutions, State and Territory criminal laws are fundamental to civil society in the Commonwealth of Australia. The Federal Government, as the primary revenue raiser in the federation, bears equal responsibility for funding legal assistance for those who are expected to comply with, or who are alleged to have breached, Australian criminal laws. There is no principal revenue stream from which the States and Territories provide legal aid. Australia's federal system and international reputation reliant on a robust framework for protecting community safety and ensuring access to justice for all people residing in or visiting areas governed by Australian law. It is therefore illogical to suggest, as the Federal Government seeks to suggest, that its responsibility for funding legal aid in criminal matters arises only under federal laws.
  18. The hollowness of this argument is also demonstrated by the fact that the Commonwealth often directs a national focus toward issues which are usually prosecuted under State and Territory laws, such as domestic violence, drug offences and serious organised crime. In relation to many crimes, similar offence provisions exist under both Federal and State or Territory legislation.
  19. The Australian Government should accept its equal responsibility for funding legal aid and redraft the National Partnership Agreement on Legal Assistance Services on the basis of co-operative federalism.
  20. The Law Council further submits that:
    - (a) The Commonwealth should increase its funding of legal aid commissions to an equal share with the States and Territories; and
    - (b) The Commonwealth should contribute its share of the \$200 million in additional funding recommended by the Productivity Commission to meet current shortfall in the availability of legal assistance in civil law matters.

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## Aboriginal and Torres Strait Islander Legal Services

21. Following the 2015-16 Federal Budget, it is now expected that ATSILS will face substantial funding cuts, commencing 1 July 2017.<sup>4</sup>
22. Over the forward estimates, there will be an estimated reduction in Commonwealth expenditure on Indigenous legal services of more than \$4 million, from \$74 million to \$69 million. At the same time, Indigenous incarceration rates are at catastrophic levels and continue to climb, unabated.
23. It is clear that the Australian Government's expenditure on Indigenous-specific legal assistance services bears little-or-no relationship to legal need, or any analysis with respect to national policy objectives.
24. There is a clear imbalance in legal assistance spending between Indigenous-specific and non-Indigenous legal services. Indigenous adults are over 14 times more likely to be imprisoned, 31 times more likely to be hospitalised as a result of family violence and are vastly over-represented among Australia's most disadvantaged and marginalised. These are all major indicators of legal need.
25. As noted in the submissions of National Aboriginal and Torres Strait Islander Legal Services and National Family Violence Prevention Legal Services, the legal needs of Aboriginal and Torres Strait Islander peoples are not able to be met under existing resource constraints. This is not a matter of 'reprioritising' or 'improving efficiency' of service provision. The consequences of the failure by the Commonwealth to adequately fund legal services for Aboriginal and Torres Strait Islander peoples are that:
  - (a) Aboriginal and Torres Strait Islander people experience extremely high levels of unmet legal need, contributing substantially to the overrepresentation of Indigenous men, women and children in prison;
  - (b) Indigenous victims of violence are often unrepresented, or unable to obtain adequate representation, which increases their likelihood of further victimisation, homelessness and sustained disadvantage;
  - (c) the justice system continues to be ineffective in arresting high rates of crime, imprisonment and recidivism, perpetuating policy failures at all levels with respect to the Federal Government's 'Closing the Gap' initiatives, undermining in particular education attainment, employment targets and health outcomes; and
  - (d) ATSILS face enormous challenges in service provision, are generally forced to offer substantially lower salaries to lawyers (compared, for example, to LACs), undermining efforts to retain staff, often in difficult working conditions and with very high caseloads.
26. The Law Council submits that:
  - (a) as a first step, it is imperative that the Government reverse funding cuts to be imposed from 2017-18; and

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<sup>4</sup> Attorney-General's Portfolio Budget Papers 2015-16, p 33.  
<https://www.ag.gov.au/Publications/Budgets/Budget2015-16/Documents/Portfolio-budget-statements/Attorney-Generals-portfolio-2015-16-PBS-full-report.pdf>

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- (b) Engage with Aboriginal and Torres Strait Islander Legal Services to develop a sustainable funding model going forward, as a matter of urgency.

## Community legal centres

27. CLCs are a fundamental tier of the legal assistance sector, providing free legal advice and assistance to disadvantaged Australians and migrants at an exceptionally low cost to the public. CLCs draw heavily on the good-will of the legal profession, with many practitioners assisting CLC clients *pro bono*, often alongside their own busy professional practices and personal lives.
28. The Federal Government's proposed \$12.1 million cuts to CLCs, to take effect from July 2017, will reduce the Commonwealth's existing funding contribution by 30 per cent (from \$42.2 million to \$30.1 million). This will not only seriously undermine service provision, it will repudiate the good-will demonstrated by those who work in this important sector for the public good.
29. The cuts are impossible to justify in terms of budgetary savings. It is widely accepted and actuarially proven that investment in CLCs yields overall efficiency savings which far outstrip any relatively minor savings in the legal assistance budget.<sup>5</sup> These cuts are false economies, which will impact most severely on disadvantaged Australians, and should be reversed before they take effect in 2017.

### Immigration Advice and Application Assistance Scheme

30. The Law Council remains concerned about withdrawal of funding of the Immigration Advice and Application Assistance Scheme (IAAAS) in March 2014.
31. Withdrawal of funding for legal advice provided through IAAAS undermines the rule of law and the Government's stated objective with the passage of the Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014 (Cth) – that is, the creation of a fast-track model of processing protection assessments in order to resolve protection applications more efficiently. Withdrawal of legal assistance will make this process far less efficient and ultimately lead to greater costs and poorer outcomes.
32. The Law Council welcomes the introduction of the Primary Application Information Service (PAIS) scheme to process the post-13 August 2012 cohort of the "illegal maritime arrival" legacy caseload. However, the Law Council remains concerned that the PAIS scheme is limited to the "most vulnerable" applicants and will provide assistance to only a fraction of those who were previously able to apply for immigration legal assistance under the IAAAS.
33. The Law Council notes that legal advice and assistance, as well as interpreter services, are fully funded by the Australian Government on Nauru, which appears to demonstrate the Government's acceptance that such services are both effective and necessary.

## Family Violence Prevention Legal Services

34. The Law Council agrees with the submissions by the National FVPLS Forum that:

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<sup>5</sup> See for example Judith Stubbs & Associates, *Economic Cost-Benefit Analysis of Community Legal Centres*, June 2012, National Association of Community Legal Centres. See <http://www.lawcouncil.asn.au/lawcouncil/images/LCA-PDF/a-z-docs/fmsdownload0463.pdf>

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- (a) The National FVPLS Program should be reinstated with long-term funding agreements of 5 years, to allow effective service planning and certainty for FVPLS clients, who by their eligibility for the service have been affected by family violence and are extremely vulnerable. As noted in the National FVPLS Forum's submission, *"Reinstating the National FVPLS Program with a direct allocation of funding will demonstrate a strong commitment from the Federal Government to the importance of the FVPLS model and provide greater transparency and certainty for funding for the FVPLSs into the future."*
  - (b) The Federal Government should provide additional funding to FVPLSs to enable those services to meet critical levels of unmet demand, requiring immediate injection of \$28 million into the sector (\$2 million for each service provider) and a further \$4.5 million for capacity-building.

## **Federal courts and tribunals**

### **Family courts**

- 35. The family courts comprise the Family Court of Australia and the family law jurisdiction of the Federal Circuit Court (which undertakes more than 87% of the family law workload of the federal courts). It has long been the position of the Law Council that the family courts are inadequately resourced.
- 36. The neglect by governments of the resourcing needs of the family courts has a range of social costs, which compounds each day. The family courts deal constantly with families in crisis, children at risk, and growing numbers of cases involving substance abuse, child neglect and domestic violence. Those cases are more likely to require judicial determination and less likely to resolve outside the court system. Accordingly, the inaccessibility of the courts and the speed with which the courts can deliver services has a particular impact on families and matters involving violence. Delays perpetuated by inadequate funding leads to increased risks and uncertainty for children and victims of family violence, discouraging victims from seeking refuge and safety through the justice system.
- 37. In 2014, the Government commissioned KPMG to report on the structure and funding of the federal courts. Regrettably, KPMG's Report has not been publicly released by the Government. However, media reports suggest that the Report will confirm that the federal courts are under-resourced and that urgent steps are required to maintain, let alone improve, court services.
- 38. The Government's forward estimates already project a deficit for the Family Court and Federal Circuit Court of \$44.4 million to the end of 2019, and the workloads of the courts are ever increasing. The failure by government to replace retiring judges and increase the numbers of judicial officers needed to meet existing case requirements simply compounds the problem.
- 39. The recent introduction of the Courts Administration Legislation Amendment Bill 2015, will merge the corporate services functions of the Federal Court with those of the Family Court and Federal Circuit Court. As part of this announcement, the Government has committed to reinvest any savings gained through this legislation back into the courts to support their core functions. This reinvestment is supported.

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40. While the Law Council welcomes this commitment by the Government, it still falls well short of what is required to enable the family courts to deliver timely services to the community.

Additional comments with respect to Aboriginal peoples in NSW

41. The Indigenous Issues Committee of the Law Society of NSW has advised that, in NSW, there have been efforts to educate Aboriginal communities about the family law jurisdiction in an effort to divert matters from the care and protection jurisdiction, where Aboriginal children are disproportionately represented.
42. Delays in accessing the family courts frustrate efforts to achieve the best outcome for Aboriginal children, by undermining the ability of family members to apply to the courts for appropriate orders before custody arrangements are determined by the Department of Families and Community Services, perpetuating the removal of Aboriginal children from their families and communities at very concerning rates.
43. As noted above, increased resourcing of the family courts is essential to enable access to justice for Indigenous people. The Federal Circuit Court has recently considered piloting Indigenous circuit court sittings in areas such as Redfern or La Perouse in Sydney, subject to existing resourcing constraints. If it can be achieved, this will be a positive measure, but unlikely to be sufficient.
44. The crisis of unmet civil law needs amongst Indigenous people will continue without substantial additional funding for the justice system. This unmet need has serious flow on effects and is likely to result in greater spending in other areas, such as criminal justice.

### **Federal Circuit Court – expanding general jurisdiction**

45. In addition to its very large family law jurisdiction, the Federal Circuit Court has an increasingly broad general law jurisdiction, particularly in industrial law and migration matters. The workload of the Court continues to grow strongly and funding has failed to keep pace, threatening both the court's independence and its capacity to perform its intended functions.
46. The Chief Judge of the Federal Circuit Court, the Hon John Pascoe AO CVO, wrote in the Court's *Annual Report 2014/15*:

*The Court's caseload in migration continues to increase substantially. Over the past five years the number of migration filings has grown nearly four-fold. This is, in itself, a daunting amount of work and filings this financial year alone totalled nearly 3900. Following the passage of new legislation aimed at dealing with the tens of thousands of as yet unprocessed protection claims, the Court expects to see an even greater increase in filings. This will result in the Court facing an unprecedented volume of work in this jurisdiction. This workload cannot be met with the current judicial resourcing.<sup>6</sup>*

47. The passage of the *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014* and the commencement of processing of the approximately 30,000 persons who comprise the "migration legacy caseload" is expected to result in an unprecedented volume of migration filings that will stretch the court further beyond its existing judicial resources.

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<sup>6</sup> *ibid*, p 4.

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48. The incremental conferral of matters in other areas of the law continues to grow, as Commonwealth legislation provides for recourse to the Court in a diverse range of commercial and other general federal areas for which the Commonwealth has responsibility.<sup>7</sup>
49. The Senate Economic References Committee recommended in December 2015 that the Australian Government give serious consideration to extending the jurisdiction of the Federal Circuit Court to include corporate insolvencies under the *Corporations Act 2001* (Cth).<sup>8</sup>
50. The Law Council has consistently supported the expansion of the Federal Circuit Court's general law jurisdiction as both necessary to relieve pressure on higher courts and appropriate to its intended functions. However, in order to continue to discharge its existing workload and any additional work arising its expanding general jurisdiction, increased funding and the appointment of additional judges in each of its jurisdictions in a timely manner is critical.
51. The Law Council submits that it may be unsustainable to await reinvestment of anticipated savings arising from amalgamation of registry functions under the Courts Administration Legislation Amendment Bill 2015. The Law Council recommends that anticipated savings be conferred on the courts immediately under the forthcoming budget, along with the immediate appointment of new judicial officers, which may assist in relieving current waiting times and workloads.

## **Administrative Appeals Tribunal (AAT)**

52. The Law Council submits that there are currently significant backlogs in the recently amalgamated AAT's case load, particularly in the migration law jurisdiction.
53. Substantial additional funding is required to alleviate pressure on the AAT to reduce this backlog, particularly in view of a substantial reduction in the number of members whose appointments were discontinued following the amalgamation of the Commonwealth tribunals in the AAT. In particular, the Law Council notes that significant delays in the listing of matters for hearing, in many cases exceeding 12 months, is impeding the capacity of the Tribunal to fulfil its statutory functions, noting Section 2A of the Administrative Appeals Tribunal Act 1975, which states:

*"In carrying out its functions, the Tribunal must pursue the objective of providing a mechanism of review that:*

- (a) is accessible; and*
- (b) is fair, just, economical, informal and quick; and*
- (c) is proportionate to the importance and complexity of the matter; and*
- (d) promotes public trust and confidence in the decision-making of the Tribunal."*

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<sup>7</sup> In 2015, for example, jurisdiction in relation to Commonwealth tenancy disputes was conferred on the Court under the [Federal Courts Legislation Amendment Act 2015](#) (Cth). See also: Federal Circuit Court (Commonwealth Tenancy Disputes) Instrument 2015.

<sup>8</sup> Senate Standing Committee on Economics, [Insolvency in the Australian construction industry Report](#) (2015), Recommendation 44 [12.68], p 193.

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## Centre for Asia Pacific Pro Bono

54. In June 2011, the Attorney-General's Department and the Law Council of Australia entered into an agreement to establish the Centre for Asia-Pacific Pro Bono (CAPPB) as a clearinghouse for pro bono projects in the Asia-Pacific region.
55. The CAPPB has been an extremely successful project. Since its launch on 12 July 2012, a total of 21 projects have been facilitated by the CAPPB program. A further four projects are currently being undertaken in the region.
56. An amount of \$495,000 was provided to CAPPB, which was applied to facilitate approved projects for the period to 30 June 2014. The life of this funding has been extended on two occasions and the program's funding will expire on 30 June 2016.
57. The scheme will be terminated unless additional funds can be found to ensure its continuation. Closure of the scheme will lead to loss of profile and networks.
58. To date, CAPPB-supported projects have been facilitated in 12 countries, including Bangladesh, Cook Islands, Fiji, Kiribati, Myanmar, Niue, Papua New Guinea, Samoa, Solomon Islands, Timor Leste, Vanuatu and Vietnam.
59. The type of assistance requested represents a range of activities, including:
- (a) complaints and disciplinary assistance to legal regulators;
  - (b) good governance programs;
  - (c) provision of legal advice and expert opinion;
  - (d) development of tertiary law curriculums;
  - (e) advocacy skills workshops;
  - (f) contract law and negotiation skills training;
  - (g) public defender training;
  - (h) workshops on the legal implications of climate change; and
  - (i) legislative drafting training.
60. It is now a critical time for the CAPPB. The CAPPB has proved to be a flexible and innovative program which has delivered small scale but critical projects facilitating pro bono services across the Asia Pacific.
61. Importantly the concept has demonstrated that there is enormous scope to deliver high quality pro bono legal support to the region, in a flexible and responsive way, to those who would not be able to assess the services.
62. The return on the outlay is impressive. For every dollar spent, \$3.40 of worth of international development assistance is generated. The return on future investment is in fact much higher once the fixed start-up costs have been discounted.
63. The Law Council requests that funding for the CAPPB be extended and placed on a more permanent footing, to ensure its important work can continue.

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## **Funding for statutory and government bodies**

### **Australian Human Rights Commission**

64. The Law Council is concerned by the reduction of funding to the Australian Human Rights Commission (\$1.65 million from the 2014-15 Budget over the next four years) to account for the reduction of special-purpose Commissioners from seven to six, and the impact of these changes on the Commission's capacity to undertake its statutory complaints handling role.
65. The Law Council considers that the assumption of a dual role by Commissioner Susan Ryan as both Age Discrimination Commissioner and Disability Discrimination Commissioner fails to adequately represent the interests of people with disabilities and address the causes of individual and systemic forms of discrimination in the same way as a separate Commissioner dedicated to carrying out the statutory requirements under the *Disability Discrimination Act 1992* (Cth). These concerns are supported by the strong evidence that discrimination on the grounds of disability is a regrettably common and damaging occurrence in Australia. Not only does this dual role adversely affect the ability of one Commissioner and Commission staff to devote sufficient resources to both areas of discrimination, conflating roles in this way has a symbolic and substantive impact on the extent to which Commissioners are able to contribute to the elimination of discrimination and promote substantive equality in accordance with the full range of statutory functions prescribed under anti-discrimination laws.

### **Parliamentary Joint Committee on Human Rights**

66. The Law Council notes the Parliamentary Joint Committee on Human Rights has one part-time legal adviser to conduct human rights assessments of hundreds of Bills (and thousands of pages of legislation) per year. In the 2014-2015 financial year, the PJCHR examined 240 Bills and 2000 legislative instruments, requesting further information in relation to 69 Bills and 28 legislative instruments.
67. The Law Council considers for the PJCHR to adequately scrutinise human rights implications of so many Bills, a full-time legal adviser should be appointed or, alternatively, a panel of external lawyers to share the load. The Law Council recommends that sufficient funding is allocated to the Committee Office in the Department of the Senate for additional personnel to fulfil this scrutiny task.

### **Australia's engagement with United Nations human rights bodies**

68. The Law Council welcomes the Government's voluntary commitments at Australia's Second Universal Periodic Review (UPR) on 9 November 2015 to work with the Australian Human Rights Commission to develop a public and accessible process for monitoring Australia's progress against UPR recommendations, including periodic statements from Government, and designating a standing mechanism to strengthen Australia's engagement with United Nations human rights reporting.
69. The Law Council considers that it is necessary for the Government to allocate sufficient funding to establish and implement these initiatives, including funding for ongoing consultation with expert non-government organisations and United Nations agencies. The Law Council considers that these monitoring and reporting mechanisms should be permanent, and that adequate resourcing of Departmental agencies,

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particularly the Attorney-General's Department as the agency with policy responsibility for the UPR, should accompany their establishment.

## **Office of the Australian Information Commissioner (OAIC)**

70. The Law Council is advised that there have been operational problems and delays resulting from the under-resourcing of the OAIC, predominantly with respect to reviews of decisions under the *Freedom of Information Act 1982* (Cth).
71. The Law Council recommends provision of additional funding to ensure the OAIC is able to effectively perform its legislative functions. The Law Council notes that on 19 January 2016, the Government reappointed the Acting Australian Information Commissioner for a period of three months. The Law Council is concerned that the short term appointment of an Acting Commissioner simply extends the uncertainty faced by the OAIC and potentially undermines its independence as a statutory agency appointed to ensure compliance with laws relating to information and privacy.
72. The Law Council considers such certainty is particularly important, following the Commonwealth Government's recent commitment to the Open Government Partnership and the current development of a National Action Plan.

## **Compliance with the *Environmental Protection and Biodiversity Conservation Act 1999***

73. The Australian National Audit Office's (ANAO) Report on 'Managing Compliance with Environment Protection and Biodiversity Conservation Act 1999 Conditions of Approval', which examined a sample of approved controlled actions over the 14 years from the enactment of the EPBC Act to 2013, concluded that the Department of Environment was struggling to fulfil its regulatory and compliance functions due to underfunding.
74. Further examination of the 2015-16 Federal Budget and Senate Committee on Environment and Communications Budget Estimates hearings during 2015 reveals that these problems are continuing, with potentially deleterious ramifications for environmental approval processes, both in terms of delays and non-compliance with EPBC Act.
75. The Law Council recommends a review budget provisions for the Department of Environment to ensure sufficient staff can be allocated to fulfil its regulatory functions under the EPBC Act.

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## **Attachment A: Profile of the Law Council of Australia**

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The Law Council of Australia exists to represent the legal profession at the national level, to speak on behalf of its Constituent Bodies on national issues, and to promote the administration of justice, access to justice and general improvement of the law.

The Law Council advises governments, courts and federal agencies on ways in which the law and the justice system can be improved for the benefit of the community. The Law Council also represents the Australian legal profession overseas, and maintains close relationships with legal professional bodies throughout the world.

The Law Council was established in 1933, and represents 16 Australian State and Territory law societies and bar associations and the Law Firms Australia, which are known collectively as the Council's Constituent Bodies. The Law Council's Constituent Bodies are:

- Australian Capital Territory Bar Association
- Australian Capital Territory Law Society
- Bar Association of Queensland Inc
- Law Institute of Victoria
- Law Society of New South Wales
- Law Society of South Australia
- Law Society of Tasmania
- Law Society Northern Territory
- Law Society of Western Australia
- New South Wales Bar Association
- Northern Territory Bar Association
- Queensland Law Society
- South Australian Bar Association
- Tasmanian Bar
- Law Firms Australia
- The Victorian Bar Inc
- Western Australian Bar Association

Through this representation, the Law Council effectively acts on behalf of more than 60,000 lawyers across Australia.

The Law Council is governed by a board of 23 Directors – one from each of the constituent bodies and six elected Executive members. The Directors meet quarterly to set objectives, policy and priorities for the Law Council. Between the meetings of Directors, policies and governance responsibility for the Law Council is exercised by the elected Executive members, led by the President who normally serves a 12 month term. The Council's six Executive members are nominated and elected by the board of Directors.

Members of the 2016 Executive as at 1 January 2016 are:

- Mr S. Stuart Clark AM, President
- Ms Fiona McLeod SC, President-Elect
- Mr Morry Bailes, Treasurer
- Mr Arthur Moses SC, Executive Member
- Mr Konrad de Kerloy, Executive Member
- Mr Michael Fitzgerald, Executive Member

The Secretariat serves the Law Council nationally and is based in Canberra.