



Law Council
OF AUSTRALIA

COVID-19: What effect has the pandemic had on legal practice, on the courts and on the law schools and how are they each responding

Speech delivered by Pauline Wright, President of the Law Council of Australia at the Australian Academy of Law 'COVID – 19: The Impacts on Lawyers, Law Schools and the Courts' online event

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Good afternoon and my thanks also to Kevin Lindgren.

It is a pleasure to be here, and to join in this important discussion.

The legal profession should be proud of the way it has adapted with agility to accommodate a digital only environment during the COVID-19 pandemic.

Like everyone else, the Law Council has had to adjust day to day practices in our office to facilitate employees working from home and a reliance on telecommunications for meetings.

But while this has been no mean feat, and has been achieved quite seamlessly, the Law Council's response to the pandemic has been much broader.

There is little doubt that the Law Council and the legal profession we represent has been profoundly affected by the COVID-19 pandemic.

We have received reports from constituent bodies regarding the decreasing viability of law practices, job losses and reduced hours. This includes barristers as well as law firms of all shapes and sizes, from sole practitioners through to large partnerships.

My own practice, a specialist micro-firm in a regional area, has had to adjust significantly. We had to very quickly invest in IT that would accommodate our lawyers and support staff to work from home, including diverting telephones and enabling remote access to digital files. Our planned employment of a new lawyer to help with my work this year has been impossible. Without the government's JobKeeper scheme I do not know that we would have remained viable.

Professional indemnity insurance providers have noted that "[gross fee income] over the next few months is very uncertain and many [law practices] may face cashflow issues right now".

Almost every part of the legal sector has been affected in some way.

And while the legal profession is feeling the crunch – the profession and its law associations will continue to play a crucial role in ensuring that government responses to COVID-19 are consistent with the rule of law, compatible with human rights obligations and subject to appropriate scrutiny.

Guided by the dual priorities of maintaining the proper administration of justice and minimising the spread of COVID-19, the Law Council has worked to assist the Federal Government, recommending appropriate legislative changes and identifying innovative solutions to challenges created by the pandemic.

This has been achieved while also engaging in constructive discussions with our member state and territory law societies and bar associations, specialist sections and committees and law firms, on how the Law Council can best prepare the profession for the recovery phase.

New powers conferred upon government under the *Biosecurity Act 2015* (Cth) are extraordinary and lack the usual checks and independent oversight generally safeguarding the exercise of coercive powers by our law enforcement and security agencies.

A key focus of the Law Council's work during the pandemic has been to consider safeguards and the proportionality of measures taken by the government, not only under the *Biosecurity Act 2005* (Cth), but also the COVIDSafe tracing app.

Following consultation with government, the Law Council was pleased to see that the legislative scheme underpinning the COVIDSafe app incorporated almost all of the Law Council's Core Design Principles.

The Law Council welcomed the establishment of a Senate Select Committee to examine all aspects of the Australian Government's response to the COVID-19 pandemic and 'related matters'.

This committee, with its broad terms of reference, is vital to reassure the public that some transparency and accountability is being maintained throughout the pandemic and recovery phase, especially during periods when Parliament is not regularly sitting.

Communication with government has been an imperative.

That is why the Law Council took the initiative to establish an Information Sharing Group to discuss the effect of COVID-19 on the justice system.

Comprising the Federal Attorney-General, heads of federal jurisdictions, the Commonwealth Director of Public Prosecutions, myself, and the President of the Australian Bar Association, the Group's regular teleconferences have provided an opportunity to share strategies and innovative solutions to maintain the administration of justice during the COVID-19 pandemic and anticipate and address practical challenges.

In times of crisis, the community looks to the legal profession and legal organisations to draw on their expertise to scrutinise emergency measures in detail.

We can offer insights into the practicality, reasonableness and proportionality of proposed measures, their consistency with constitutional principles and the rule of law and identify responses that may indirectly and disproportionately disadvantage vulnerable groups.

Which is why the Law Council has called on government to implement a national review of the resourcing needs of the judicial system.

Such a review should consult with courts, tribunals and the legal profession and incorporate the challenges and benefits that have been identified in the context of the COVID-19 pandemic.

The Law Council is firmly of the view that key efficiencies resulting from the judicious use of AVL should be retained post-pandemic. Enabling attendance at directions hearings and short non-contentious matters by digital means has resulted in significant time and real cost savings to lawyers and clients, enhancing access to justice. But, the technology hardware must be available no matter the location of the court or tribunal and the software platform must be accessible to all users, including unrepresented people. Justice hubs, perhaps in public libraries, might be established to enable this. Additionally, we must call upon government to ensure that reliable, high speed internet is available throughout Australia. Following set-up costs, the long-term cost savings to the community will be significant.

2020 has been unlike any year we have experienced, and its impact will be widespread and long lasting.

It will be vital that all extraordinary powers conferred during the crisis be wound back as soon as the pandemic passes. The Law Council will continue its constructive engagement with government to ensure that legal and human rights are protected and upheld throughout this crisis and beyond.

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