

Better Access to Justice for All Western Australians

STATE ELECTION CAMPAIGN 2025



Acknowledgement of Country

The Law Society of Western Australia respectfully acknowledges the Traditional Owners of the land on which we live and work, the Whadjuk people of the Noongar Nation, and pay our respects to their Elders past, present and emerging.

Artist: Marlia Miyalan Fatnowna

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LAW SOCIETY OF WESTERN AUSTRALIA'S STRATEGIC IMPERATIVES

The Law Society's State Election Advocacy Initiatives play an important role in ensuring the Society achieves our strategic imperatives for our members and the legal profession in Western Australia.

1



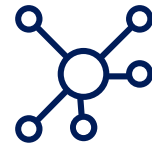
To be an influential voice, enabling members and community to stay informed and represented

2



To be an essential support to legal professionals, empowering them to do their best work

3



To be a central point for connections across the profession, industry and community

FOREWORD FROM THE LAW SOCIETY OF WESTERN AUSTRALIA

For the past 97 years, the Law Society of Western Australia has been the proud voice of the legal profession in Western Australia, leveraging the collective knowledge and expertise of the legal profession to advocate for legislative reforms and systemic improvements that will ensure access to justice for everyone, and uphold the rule of law in our community.

Put simply, the ‘rule of law’ principle is that all people are equal before the law and must obey the law. The rule of law means that laws apply to everyone, including the people who make them.

The four universal principles of the rule of law are:

1. Accountability
2. Open government
3. Just law
4. Accessible and impartial justice

The rule of law underpins the way of life that all Western Australians value and cherish.

Its principles provide the basis for our society’s foundational values: that all people are entitled to the presumption of innocence and to a fair and public trial, that the judiciary should be independent of the Executive and the Legislature, and that no person should be the subject of treatment or punishment that is inconsistent with respect for the inherent dignity of every human being.

The 2025 State Election presents an opportunity for the incoming government to prioritise legislative reforms and initiatives that are necessary to ensure that everyone is treated fairly and equally before the law, especially the most disadvantaged members of our community – children, victims of crime, Aboriginal and Torres Strait Islander peoples, and members of the LGBTIQ+ community, and that our legal system operates effectively and efficiently for the benefit of all.

This Election Platform asks the incoming government to deliver **better access to justice for all Western Australians.**

ABOUT THE LAW SOCIETY OF WESTERN AUSTRALIA

The Law Society of Western Australia is the peak professional association for nearly 5,000 lawyers in Western Australia. As a not-for-profit association, it is dedicated to the representation of its members and the enhancement of the legal profession through being a respected leader and contributor to the development and improvement of law, access to justice and the rule of law throughout Western Australia.

The Law Society's strategy is guided by its objectives and mission to deliver strong advocacy for the Western Australian legal profession. Our purpose as the voice of the legal profession in Western Australia, drives us to represent members' views and to provide expertise in our advocacy role.

Two of our three strategic imperatives are particularly relevant to our advocacy and policy work, these being:

- to be an influential voice, enabling members and the community to stay informed and represented; and
- to be an essential support to legal professionals, empowering them to do their best work.

The Law Society's voice is informed by members of the profession who share their specific expertise, experience and perspectives. Our Council is supported by expert standing committees with over 380 members across many areas of legal practice relevant to the rule of law and access to justice at both the state and federal level.

It is through this expertise, knowledge and drive of members who volunteer their time on these committees that the Law Society's election platform has been developed and refined.

In this document Western Australia is abbreviated to WA and 'WA Government' refers to the Government of Western Australia.

THE RULE OF LAW



RULE OF LAW
EDUCATION CENTRE


All people should be ruled by just laws subject to the following principles:



Used with permission from the Rule of Law Education Centre.



A WELL-FUNCTIONING LEGAL SYSTEM



An effective, efficient and fair legal and judicial system is an essential component of the rule of law in WA. A well-functioning legal system ensures that laws are respected and the community's legal needs met. The Law Society has identified a number of priority areas for improvement in relation to legal assistance funding and pro bono legal services, court facilities, an independent Judicial Commission to manage complaints against the judiciary, freedom of information system improvements and digital practice issues.

ADDITIONAL LEGAL ASSISTANCE SERVICES FUNDING

The Law Society supports the implementation of the recommendations of the independent review conducted by Dr Warren Mundy FRAeS FAICD (the Mundy Review) in 2024 and a legal assistance funding strategy that ensures the sector can meet community need.

Overview

In each Australian State and Territory, the legal assistance sector is jointly funded by the state/territory governments and the Australian Government. The WA Department of Justice's Legal Assistance Strategy and Legal Assistance Action Plan are due to expire in 2025. The development of the Legal Assistance Strategy is informed by the National Legal Assistance Plan (NLAP), which was recently the subject of an independent review conducted by Dr Warren Mundy FRAeS FAICD (the Mundy Review).

The Mundy Review's final report was released in May 2024 and makes 39 recommendations to reform NLAP and restructure the funding of Australia's legal assistance services by the Australian, state and territory governments.¹

The opportunity now presents for the incoming government to implement best practice and fit for purpose legal assistance funding informed by the Mundy Review through WA's Legal Assistance Action Plan beyond 2025. In particular the Mundy Review recommended that the Australian, state and territory governments work in collaboration to develop a national outcomes framework for the legal assistance sector and make a commitment to increasing funding for legal services as much as is necessary to ensure the sector can respond to community need. In supporting the development of the outcomes framework, the incoming government should ensure the provision of additional funding for administration which

Recommendation

Implement the recommendations of the Mundy Review and ensure adequate funding of legal assistance is given the highest priority.

Benefits

- Supporting enhanced access to justice for vulnerable Western Australians, in particular for Aboriginal and Torres Strait Islander people and people escaping family and domestic violence;
- Improving workforce sustainability through supporting a skilled, well supported and diverse legal assistance sector workforce; and
- Addressing the challenges faced by practitioners in rural, regional and remote areas.

services will need to meet ongoing reporting obligations.

The Mundy Review revealed that across all aspects of the sector, including community legal centres (CLC), family violence prevention legal services (FVPLS), Aboriginal legal services (ALS) and private practitioners accepting grants of legal aid, funding is inadequate and unsustainable. As a result, many vulnerable Australians do not have access to essential legal services.

The Mundy Review identified that services in remote, regional and rural (RRR) Australia face additional challenges recruiting and retaining staff and managing the increased cost of service delivery outside of metropolitan regions. There are parts of Australia where there are little or no legal assistance services provided for disadvantaged and vulnerable people.

To address these concerns, the Mundy Review made recommendations to improve workforce sustainability. In particular, the Mundy Review recommended that legal and non-legal staff at CLCs, FVPLSs and ALSs are paid equivalent remuneration to their Legal Aid counterparts, and that grants of legal aid to private practitioners are increased to achieve parity with court scales.

The Mundy Review acknowledged that services in RRR areas face additional funding difficulties. The cost of service delivery in RRR Western Australia is greater than in the metropolitan region, and shortfalls in funding means services are not meeting community's legal needs. The Mundy Review recommended the funding of initiatives to increase staff recruitment and retention in RRR areas, such as a HELP debt forgiveness programme, as well as an increase in baseline funding to support the health of the legal sector in RRR areas.

The incoming government should invest in workforce strategies that support a skilled, well supported and diverse workforce in the legal assistance sector for the benefit of vulnerable Western Australians in need of legal assistance.

The Mundy Review also recommended that funding strategies address Closing the Gap priority reforms and are developed in consultation with Aboriginal and Torres Strait Islander stakeholders. The Law Society supports

the implementation of the Mundy Review's recommendations to adopt a funding strategy which recognises the self-determination of Aboriginal and Torres Strait Islander peoples.

On 6 September 2024 National Cabinet signed a Heads of Agreement for a new National Access to Justice Partnership which pleasingly increased legal assistance funding by \$800 million over 5 years from 2025-26. Any increase is welcome, although this falls short of addressing the \$1 billion per annum gap identified in the Mundy Review.

There is currently no separate provision for private practitioners who undertake grants of legal aid.

The Law Society looks to the incoming government to push the Australian Government for more funding and to itself commit additional state funding to the legal assistance sector to provide ongoing certainty to services, support workforce sustainability and to properly fund private practitioners, who undertake grants of legal aid.

Endnotes

1. *Independent Review of the National Legal Assistance Partnership* (Final report, March 2024) <<https://www.ag.gov.au/legal-system/publications/independent-review-national-legal-assistance-partnership-2020-25>>.

COURT FACILITIES

The Law Society advocates strongly for funding to improve court resources and infrastructure, in particular in regional courts and multi-function police facilities. If upgrades to existing courthouses cannot be made in the short term, then alternative temporary facilities should be provided in locations where courthouses presently have no waiting rooms, interview rooms, drinking water or toilets, as such amenities are critical to ensure access to justice and the proper conduct of court proceedings.

Overview

The Justice Pipeline model is an analytical tool which was developed by the WA Government to inform funding decisions for the appointment of judicial officers to courts and corrective services, by estimating the impact and cost of policy initiatives. Although the model was completed in 2019, the WA Government has not released data from the model nor completed a full and public review of court facilities in recent years.

Concerningly, there have been judicial appointments funded through the Justice Pipeline model, but there has not been a corresponding increase in funding for court infrastructure to house these judicial officers and their essential staff. The Law Society has received reports of judicial officers and staff not having access to office spaces in Perth metropolitan court buildings. As more judicial officers are appointed, the capacity of court buildings must also increase to provide adequate facilities for the people working within them.

In July 2022, the State Infrastructure Strategy (SIS) was developed by Infrastructure Western Australia to provide an overview of WA's significant infrastructure needs and priorities.² The SIS made three recommendations related to police, courts and corrective services. The SIS recommended that, in the medium to long

Recommendations

1. Complete a comprehensive audit of court facilities and infrastructure across metropolitan and regional WA.
2. Implement the recommendations of the State Infrastructure Strategy in relation to improving court infrastructure.

Benefits

- Ensuring judicial officers, court staff and legal practitioners have adequate facilities to work efficiently and safely;
- Enhancing access to justice for communities in remote, regional and rural WA; and
- Creating a safer environment for vulnerable people attending court for sensitive matters, and for practitioners working in the regions.

term, projects such as improving the facilities of criminal and civil courts in the Perth CBD and metropolitan area, and redeveloping regional courthouses, should be considered. The WA Government has expressed its full support for these recommendations, however implementation has so far prioritised police and correctional initiatives.

Many regional court facilities lack basic amenities and are not safe environments for vulnerable people attending court for sensitive matters. Often, there are limited spaces for lawyers to take instructions and give legal advice in a private and confidential setting. This is particularly concerning when victims of family and domestic violence do not have a safe space away from perpetrators or other parties to family violence restraining orders.

Furthermore, many regional courts have limited public toilets and drinking facilities which poses a safety hazard for people attending court in regions which experience extreme heat and tropical monsoonal weather.

It would be beneficial to the public, the legal profession and the incoming government if a public review of WA court facilities is completed to ensure that issues affecting the efficiency of WA courts are identified and addressed, and to inform the preparation of a strategic plan to progress the SIS's recommendations. There is already clear evidence that courts outside the Perth metropolitan area are failing to meet the community's needs, however deeper analysis is required to assess the funding needs of courts throughout WA.

Endnotes

2. Infrastructure Western Australia, *Foundations for a stronger tomorrow* (State infrastructure strategy, July 2022) 312-317 <<https://prod-iwa-public-files.s3.ap-southeast-2.amazonaws.com/public/2022-07/2022%20Final%20SIS.pdf>>.

ESTABLISHMENT OF STATE JUDICIAL COMMISSION

The Law Society received assurances in 2021 that a re-elected Labor government would work with the Law Society to progress the establishment of a State Judicial Commission. The Law Society will continue to call on the incoming government to implement this important reform, which will bring vital independence and transparency to the handling of complaints against the judiciary.

Overview

A Judicial Commission is an independent statutory authority established to investigate complaints regarding judicial officers and provide training and education to judicial officers.

The Law Society's position is that a Judicial Commission is essential to the promotion of the rule of law. For many years, the Law Society has been advocating for the establishment of an independent statutory Judicial Commission in WA to investigate and manage complaints against members of the judiciary.

Public confidence in the administration of justice is fundamental to the rule of law. To ensure and promote that public confidence, it is essential that any complaints from members of the public about the competency, independence and impartiality of a judicial officer when presiding over a matter should be referred to an independent Judicial Commission for investigation.

In the absence of a Judicial Commission many commentators believe the process for dealing with complaints lacks transparency and complainants therefore cannot be confident that complaints are dealt with impartially. The

Recommendation

Establish a Judicial Commission in WA based on the judicial commission model operating in New South Wales.

Benefits

- Enhanced public confidence and transparency in the administration of justice;
- Assisting courts in achieving consistency in sentencing; and
- Providing continuing education and training of judicial officers to enhance their capability.

Law Reform Commission of Western Australia's August 2013 final report on *Complaints Against Judiciary* recommended that a Judicial Commission be established in WA.³

The concept of sanctions is not compatible with judicial independence. The Law Society's position is that application of relevant education or counselling is an appropriate way of dealing with behaviour that falls short of that required for a finding of unfitness for/removal from office. Failure on the part of a judicial officer to 'absorb' that education or the repetition of the conduct in question may indicate a lack of fitness for office in respect of which a further complaint may precipitate removal.

In accordance with the Law Reform Commission of Western Australia's 2013 recommendations, for a WA Judicial Commission to be successful it is recommended that the Judicial Commission model is based on the Judicial Commission operating in New South Wales (NSW), and the incoming government commit the resources necessary to establish a Commission secretariat of the same quality as the NSW model. The NSW Commission not only manages complaints against members of the judiciary but also helps courts to achieve consistency in sentencing and provides continuing education and training for judicial officers. The education arm of the NSW model has been found to be crucial to support and train judicial officers.

Endnotes

3. Law Reform Commission of Western Australia, *Complaints against the judiciary* (Project 102, August 2013) <<https://www.wa.gov.au/system/files/2021-02/LRC-Project-102-Final-Report.pdf>>.

REVIEW OF WESTERN AUSTRALIA'S PRO BONO MODEL GUIDELINES

The Pro Bono Model Guidelines ('Guidelines') were implemented in 2020 and are now overdue for review. A review will provide an opportunity to address the matters identified in the 2023 evaluation project, and to make administrative improvements to the Guidelines. This will ensure the continued leverage of pro bono assistance from legal practices that provide legal services to the WA Government for the benefit of vulnerable Western Australians.

Overview

In July 2019, Cabinet approved the introduction of a pro bono requirement as part of the WA Government's legal services tender process, which was implemented in July 2020.⁴

The Pro Bono Model seeks to build strong pro bono practices within law firms that provide legal services to the government, thereby improving access to justice for individuals from marginalised and disadvantaged backgrounds. It formally acknowledges that law firms have been providing pro bono services to community legal centres (CLCs) and not-for-profit bodies for a long time and builds on these pro bono practices.

Under the Pro Bono Model, law firms providing legal services to government are required to be a signatory to the Australian Pro Bono Centre's *National Pro Bono Target* and commit to undertaking pro bono work for 'approved causes' within WA to the value of at least 10% of the value of the firm's government legal work. The WA Pro Bono Guidelines⁵ detail the reporting arrangements and obligations that apply to these law firms providing legal services to government agencies.

Recommendations

1. Undertake a review of the *WA Pro Bono Model Guidelines*; and
2. Make administrative improvements to the *WA Pro Bono Model Guidelines*.

Benefits

- Enhancement of pathways and processes for pro bono legal services in WA;
- Ensuring continued leverage of pro bono assistance from legal practices that provide legal services to the WA Government; and
- Improved access to justice for individuals from marginalised and disadvantaged backgrounds.

The Pro Bono Model has been largely successful in delivering expanded pro bono services to vulnerable community members. The Pro Bono Model expressly requires that it be evaluated within 30 months of commencement to ascertain its effectiveness in increasing access to justice for individuals.

The Law Society and representatives from the Community Legal Sector, private law firms, Government Trading Enterprises, universities, the Independent Bar and the State Solicitors Office served on an Evaluation Working Group in 2022. An evaluation of the Pro Bono Model was required to be completed by 1 January 2023. The results of the evaluation have not been finalised or made public.

Endnotes

4. Department of Justice, *Western Australian Pro Bono Services Model* (1 July 2020) <<https://www.wa.gov.au/system/files/2022-08/ss0-pro-bono-model.pdf>>.
5. Department of Justice, *Western Australian Pro Bono Guidelines* (1 July 2020) <https://www.wa.gov.au/system/files/2022-08/WA-Pro-Bono-Guidelines-attachment_0.pdf>.

FREEDOM OF INFORMATION SYSTEM IMPROVEMENTS

The Law Society supports the implementation of best practice recommendations from Monash University's 2024 report '*The Culture of Implementing Freedom of Information in Australia*⁶ which will improve the effective and efficient functioning of the Freedom of Information system in Western Australia.

Overview

In June 2024, Monash University released the Final Report from a study of FOI culture in Australia (the Report). The Report was completed in partnership with the Western Australian Office of the Information Commissioner (OIC), the Office of the Victorian Information Commissioner and the South Australian Ombudsman.⁷

FOI practitioners, executives and government ministers in WA, Victoria and South Australia were interviewed and surveyed as part of the Report. The Report identified major themes undermining the efficiency of FOI processes including inadequate funding for staff, risk management and a lack of understanding of or commitment to FOI principles.

According to the Report, a well-functioning and comprehensive FOI system acts as a deterrent against corruption in political systems, and empowers the public with independent access to information, enabling greater participation in the political process and supporting a healthier democratic environment.

The opportunity now presents for the WA Government to implement best practice improvements to FOI processes informed by the recommendations in the Report and taking a whole of government approach.

Recommendation

Improvements to the freedom of information system including:

- Review and reform the *Freedom of Information Act* (WA) to improve FOI culture and practices across state government agencies;
- Fund and update the Office of the Information Commissioner Western Australia website to be user friendly to both applicants and practitioners;
- Provide sector specific education to enhance the capacity and capability of FOI agencies to develop proactive release policies; and
- Examine how proactive release could assist sectors by releasing commonly requested documents by default.

Benefits

- Improving the efficiency of WA's freedom of information processes (FOI);
- Fostering trust between the public and WA Government agencies; and
- Strengthening democracy through the transparent exchange of information and ensuring that governments are accountable for their actions.

The Report makes 11 general recommendations, and 4 further recommendations specific to WA. The Report highlights that adequate funding for FOI processes and records management systems is critical to promoting a culture of transparency and the effective operation of FOI legislation.

The general recommendations include legislative and administrative changes to improve FOI culture and practices, including modernising terminology and procedures to reflect digital environments and systems, streamlining consultation requirements, providing realistic legislative timeframes, developing proactive release policies, and providing sector-specific (that is - the health sector, government departments, statutory agencies and local government) FOI training to enhance the capacity and capability of FOI agencies.

Endnotes

6. Monash University, *The culture of implementing Freedom of Information in Australia* (Final report, 18 June 2024) <<https://www.oic.wa.gov.au/Materials/Publication/FOI%20Culture%20Research%20Report%20VIC%20SA%20WA%202024.pdf>>.
7. Monash University, *The culture of implementing Freedom of Information in Australia* (Final report, 18 June 2024) 111.

DIGITAL PRACTICE ISSUES

The Law Society supports legislative reform to enable affidavits, statutory declarations and deeds to be witnessed electronically and by Audio Visual Links, which will bring WA in line with other jurisdictions and community expectations.

Overview

Under the *Oaths, Affidavits and Statutory Declarations Act 2005 (WA)* (OAS Act), an affidavit must be sworn or affirmed in the physical presence of an authorised witness and signed by hand.

During the peak of the COVID pandemic between 2020 and 2022, the WA Government made temporary changes to the OAS Act under the *COVID-19 Response and Economic Recovery Omnibus Act 2020 (WA)* which allowed affidavits and some other legal documents to be witnessed remotely using Audio Visual Links (AVL). This temporary amendment was highly successful in improving the accessibility of authorised witnesses, especially for people living in remote and regional areas.

Under section 9 of the *Property Law Act 1969 (WA)*, deeds can only be executed by an individual if signed by hand in the physical presence of at least one witness. For corporations there is an additional requirement that the corporation's seal is affixed to the deed in the presence of and attested by a person who is its clerk, secretary or other permanent officer or their deputy, and a member of its board of directors, council or other governing body. In 2023 Landgate released a consultation paper seeking feedback on proposed reforms to enable the creation and execution of documents in electronic form.⁸ Landgate has recommended allowing corporations to execute deeds in the same manner as Australian companies under the *Corporations Act 2001*, which does not require affixing a seal and allows for deeds to be executed electronically.

Recommendations

1. Conduct a review of the *Oaths, Affidavits and Statutory Declarations Act 2005 (WA)* and consider the benefits of legislation in effect in Queensland and Victoria that allows affidavits and some other legal documents to be witnessed via audio-visual link (AVL); and
2. Remove the requirement under the *Property Law Act 1969 (WA)* for corporations to execute deeds in person and allow deeds to be executed electronically.

Endnotes

8. Landgate, *Electronic Creation and Execution of Documents* (Consultation Paper, 2023), <<https://www.landgate.wa.gov.au/siteassets/documents/news/docs-linked-in-cibs/consultation-paper-on-the-electronic-creation-and-execution-of-documents.pdf>>.

Benefits

- Improving accessibility of witnesses for individuals in remote, regional and rural WA;
- Modernising WA legislation and bringing WA in line with other States that allow remote witnessing; and
- Creating consistency with provisions of the *Corporations Act 2001* (Cth) which allow Australian companies to sign deeds electronically and remove the requirement to affix a seal.



YOUTH JUSTICE REFORM

It is clear that an independent review of the youth justice system in WA is urgently required.

The unlawful detention of children in Western Australia must cease and the Government must ensure that it complies with its obligations under the United Nations Convention on the Rights of the Child and the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The treatment of children while in State care is of great public interest and concern. Youth detention should be an environment for supervision and rehabilitation, not punishment and neglect. The Government has a responsibility to ensure that children in detention are treated in a trauma-informed and culturally safe way. The Law Society also advocates for enhanced funding and service levels for early intervention strategies, which are proven to decrease rates of youth incarceration and recidivism.

YOUTH JUSTICE REFORM

Overview

The Law Society has been advocating for action on this issue for more than 20 years.

The youth justice system is highly complex, with intersecting historical, environmental, institutional, and system factors contributing to children and young people becoming involved in the youth justice system. To address the problems in the youth justice system, the incoming government also needs to consider the intersecting issues in early childhood education, health services, mental health servicing, child protection interventions, the education system, and diversion and rehabilitation services.

In the meantime, Unit 18 at Casuarina Prison should be closed. Children are dying in youth detention. This cannot continue. This is why the Law Society calls for an independent review of the youth justice system, as well as reform of early intervention services and strategies, and youth detention system policy.

Recommendation

Undertake an independent review of the youth justice system in WA.

Benefits

- Developing a holistic approach to youth justice to address the underlying causes of offending and reoffending by young people;
- Improved outcomes for children that intersect with the youth justice system;
- Ensuring reasonable steps are taken to prevent future deaths of young people in youth detention;
- Ensuring decision making is informed by expert opinion and evidence-based practice;
- Strengthening relationships with the community through a commitment to transparency and accountability; and
- Complying with Australia's international human rights obligations.

“
Tragically, by not addressing their human rights early on, and instead taking a punitive approach to their offending, we are essentially criminalising some of the most vulnerable children in Australia. Many are First Nations children dealing with intergenerational trauma and disadvantage, and children with disabilities, mental health issues and learning problems. Many of these children and their families are living with poverty, marginalisation and systemic racism. For some, their most basic needs are not being met, such as a safe home to live in. The systems that are meant to help them, including health, education and social services, are not fit-for-purpose and these children are falling through the gaps.
”

National Children’s Commissioner Anne Hollonds, ‘Help way earlier!’ How Australia can transform child justice to improve safety and wellbeing Report, 2024.

Endnotes

Help way earlier! How Australia can transform child justice to improve safety and wellbeing (Web Report)
<https://humanrights.gov.au/sites/default/files/document/publication/1807_help_way_earlier_-_accessible_0.pdf>

EARLY INTERVENTION STRATEGIES

Address the underlying causes and social determinants of criminal offending behaviour amongst children and young people by implementing reforms which support early intervention.

Overview

The Law Society is asking the incoming government to build on and expand programmes to support early intervention for children at risk of entering the criminal justice system.

Community infant and child nursing programmes and assessments, Department of Communities family support programmes and primary and secondary teachers all serve a vital role in identifying young people at risk of falling behind, whether because of a developmental disability or because of inadequate foundational education. These services should be well funded to ensure that children who present with any developmental 'red flags' can be immediately assessed and given access to early intervention services.

A failure to identify, diagnose and treat developmental issues is linked to future educational and social disadvantage.⁹ Early interventions for physical issues such as hearing, eyesight, speech and physical strength and dexterity will result in positive educational and vocational outcomes.

Primary and secondary teachers serve a key role in identifying young people at risk of falling behind, whether because of a developmental disability or because of inadequate foundational education. Disengagement from education is an early indicator of a young person's risk of entry into the youth justice system. Therefore, identifying and responding to signs of disengagement early is crucial to diverting children away from the youth justice system.

The incoming government must also address the overrepresentation of Aboriginal and Torres Strait Islander children and young people in the youth justice system.

Recommendations

1. Fund community infant and child nursing programs and assessments, and expand Department of Communities family support programs to provide frontline monitoring prior to compulsory formal education;
2. Ensure all children have access to health services that provide early intervention for issues related to physical and intellectual development;
3. Make school reports (including education attendance, in-school behaviours and developmental assessments) available in the Children's Court jurisdiction and embed education officers in all Children's Courts; and
4. Work in partnership and consultation with Aboriginal and Torres Strait Islander community stakeholders and Aboriginal Community Controlled Organisations (ACCOs) to develop culturally appropriate and trauma informed services for intervention and rehabilitation before and after a child enters the youth justice system.

WA has the highest rate of Aboriginal and Torres Strait Islander young people in youth detention in the nation.¹⁰ Aboriginal and Torres Strait Islander children between the ages of 10 and 17 years old are over 27 times more likely to be incarcerated compared to other children in the same age group. Historical injustices such as Stolen Generations, wage theft and other colonial policies continue to impact Aboriginal and Torres Strait Islander families and children financially and socially. Services aimed at early intervention for Aboriginal and Torres Strait Islander children must be developed in partnership with key community stakeholders and Aboriginal Community Controlled Organisations (ACCOs). As a partner of the National Agreement on Closing the Gap, the WA Government has committed to decreasing the rate of Aboriginal and Torres Strait Islander young people (10-17 years old) in detention by at least 30 per cent before 2031.¹¹ However, progress towards this target is negligible.

Endnotes

9. Commissioner for Children and Young People, *Youth Justice* (Issues paper, June 2020) 7 <<https://www.cyp.wa.gov.au/media/4566/issues-paper-youth-justice-updated-june-2020-final-for-website.pdf>>; 'Nine out of ten young people in detention found to have severe neuro-disability', *Telethon Kids Institute* (web page, 13 February 2018) <<https://www.thekids.org.au/news-events/news-and-events-nav/2018/february/young-people-in-detention-neuro-disability>>.
10. 'Youth justice in Australia 2022-2023' *Australian Institute of Health and Welfare* (Web report, 28 March 2024) <<https://www.aihw.gov.au/reports/youth-justice/youth-justice-in-australia-annual-report-2022-23/contents/about>>.
11. *National Agreement on Closing the Gap* (July 2020), Target 11 <https://www.closingthegap.gov.au/sites/default/files/2022-09/ctg-national-agreement_apr-21-comm-infra-targets-updated-24-august-2022_0.pdf>.

Benefits

- Decreasing the rate of youth incarceration and recidivism by providing children with appropriate support for rehabilitation and reintegration outside of the criminal justice system and by addressing the root causes of criminal offending behaviour;
- Ensuring young people have a pathway out of the criminal justice system before they become entrenched in a cycle of reoffending and disadvantage; and
- Demonstrating the incoming government's commitment to addressing the disadvantage and overrepresentation experienced by Aboriginal and Torres Strait Islander people at every level of the criminal justice system.

YOUTH DETENTION FACILITIES

The youth justice system is complex, and true reform will inevitably take time. However, without a transparent roadmap to reform, which acknowledges existing contributions from legal and policy experts and people with lived experience, the public cannot be confident in the incoming government's commitment to protecting children in its custody from harm.

Overview

In June 2024, the Corruption and Crime Commission (the Commission) released a report on its investigation into allegations of serious misconduct following the death of a juvenile detainee in Unit 18 in October 2023; Cleveland Dodd, a 16-year-old Aboriginal boy, who was the first child to die in custody in WA.¹² Although the Commission ultimately found no serious misconduct on the part of Youth Custody Officers (YCOs) on duty, the Commission uncovered deeply concerning details about the experience of young people in youth detention. The Commission's report was consistent with reports from community stakeholders who have consistently raised concerns about conditions in youth detention facilities and the functioning of the youth justice system.

Youth detention should be an environment for supervision and rehabilitation, not cruel punishment and neglect. YCO's are clearly not equipped with the skills or experience to adequately care for children with complex needs. The incoming government has a responsibility to ensure that children in detention are treated in a trauma-informed and culturally safe way. We note the Law Council of Australia does not support the incarceration of children below the age of 14.

The Coroner's Court has commenced an investigation into Cleveland's death which is ongoing as at October 2024. However, the initial cause of death appears to be self-inflicted hanging. It is deeply distressing that the Royal

Recommendations

1. Commit to a deadline for the closure of Unit 18 at Casuarina Prison in the short term; and
2. Publicise a road map to youth justice reforms, informed by existing and ongoing consultation with youth justice experts, people with lived experience and advocacy groups representing children in detention.

Benefits

- Reduced harm to young people in youth detention;
- Enhanced public confidence in the youth justice system; and
- Demonstrating a commitment to addressing the disadvantage experienced by Aboriginal and Torres Strait Islander people at every level of the criminal justice system.

Commission into Aboriginal Deaths in Custody's recommendation to minimise ligature points in prisons has not been implemented as the highest priority in Unit 18.¹³ If a facility cannot be made safe for children, it is not fit for purpose.

The WA Government has repeatedly made and broken promises in relation to its plans for closing Unit 18. When children were first relocated from Banksia Hill Youth Detention Centre to Casuarina Prison in July 2022 the WA Government initially claimed the move was temporary and the group of 17 teenagers would be returned to Banksia Hill 'as soon as practicable'.

On 26 September 2024, the State Government announced the allocation of funding for the design planning of a proposed new youth detention facility. The facility is to be located at Banksia Hill and will provide access to the same facilities currently available, which have proven inadequate to date. No timeline for the closure of Unit 18 was indicated.

Unit 18's closure and plans for potential replacement facilities are matters of great public interest and concern. The incoming government must ensure the transition to closing Unit 18 is managed transparently and there are mechanisms to hold the WA Government accountable to community expectations.

There are many leading experts advocating for reform of the youth justice system. The incoming Government has a responsibility to consult with these experts, as well as people with lived experience of youth detention and advocacy groups representing children in detention such as the Aboriginal Legal Service of Western Australia. However, consultation is only meaningful if it is followed by action. There are already recommendations related to children in youth detention developed through consultation with various leading bodies that the incoming government can progress now.¹⁴

Endnotes

12. Corruption and Crime Commission, *An investigation into allegation of serious misconduct following the death of a young detainee in Uni 18 Casuarina Prison* (Report, 11 June 2024) <https://www.ccc.wa.gov.au/sites/default/files/2024-06/An%20investigation%20into%20allegations%20of%20serious%20misconduct%20following%20the%20death%20of%20a%20young%20detainee%20in%20Unit%2018%20Casuarina%20Prison_1.pdf>.

13. Royal Commission into Aboriginal Deaths in Custody (Final Report, March 1991) <<https://www.austlii.edu.au/au/other/IndigLRes/rciadic/>>.

14. These include recommendations from the the Royal Commission into Aboriginal Deaths in Custody published in 1991;¹⁴ recommendations from the Australian Law Reform Commission's inquiry into the Incarceration rate of Aboriginal and Torres Strait Islander peoples published in 2018;¹⁴ and recommendations from the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability published in 2023 to name only a few.



CRIMINAL JUSTICE REFORM



For many years, the Law Society has called for the abolition of mandatory sentencing.

Mandatory sentencing undermines the principles of the rule of law, because sentencing is the role of the judiciary, not executive government.

It is long overdue for the recommendations of the Royal Commission into Aboriginal Deaths in Custody to be fully implemented, including eliminating or minimising ligature points in prison cells and appropriately funding treatment programmes.

The 2025 state government election provides an opportunity for the incoming government to demonstrate to the people of Western Australia that it values everyone's rights equally.

Family and domestic violence prevention must remain a priority for the incoming government, including community education, and funding to support services in all areas related to family and domestic violence.

FAMILY AND DOMESTIC VIOLENCE (FDV)

Family and domestic violence (FDV) is a major health and welfare issue in Australia. In recent years, the WA Government has taken positive steps to promote awareness of FDV. However, FDV continues to affect many Western Australian families, and the incoming government must maintain its commitment to a long-term holistic approach to addressing the causes and impacts of FDV.

Overview

FDV takes many forms and can include financial, emotional, physical or sexual abuse and coercive control. The incoming government must adopt strategies to change a culture that enables perpetrators, and to support survivors to leave violent or abusive relationships.

The Law Society also advocates for enhanced Legal Assistance Funding to support legal services in all areas of law related to FDV.

Recommendation

Provide long term, sustainable and predictable funding for legal services in all areas of law related to FDV and in particular:

- Funding for and recognition that Aboriginal Community Controlled Organisations are best placed to provide legal assistance and social support services to Aboriginal and Torres Strait Islander peoples;
- Funding for and recognition that the area of child protection requires urgent access to adequately resourced holistic services;
- Specialised resourcing for women in prison, from culturally and linguistically diverse backgrounds and women with complex child protection matters;
- Funding for courts dealing with family law matters, as well as family violence support services;
- Comprehensive, ongoing and mandatory FDV training for judicial and court staff situated in courts exercising jurisdiction in FDV related matters;
- Develop and implement FDV strategies, including community education for particularly vulnerable groups, such as Aboriginal and Torres Strait Islander people and individuals from culturally and linguistically diverse communities; and
- Funding for programmes to educate the general public on FDV and targeted education programmes to support people to leave FDV relationships.

Key Statistics

- 25% of women and 8% of men in Australia are, or have been, victims of violence from a current or former partner or a family member.¹
- An estimated 22% of adults have experienced childhood abuse and/or witnessed parental violence before the age of 15.²
- In 2022, 37% of homicides and related offences in WA were FDV related.³
- In 2022, the number of victims of assault in WA increased by 7% to 38,743, the highest number in 30 years. 64% of assaults were FDV related.⁴
- Intimate partners are responsible for almost 80% of the hospitalisations of women from family and domestic violence in WA, with 20% of perpetrators being other family members.⁵
- FDV is a leading cause of homelessness for women and children – 51.5% of women and 37% of young people accessing homelessness services sought assistance because of experiences of domestic violence.⁶
- FDV is experienced at disproportionately high rates by Aboriginal and Torres Strait Islander and culturally and linguistically diverse women and children, people with disability and people who identify as LGBTIQ+.⁷
- First Nations women and children in Australia are 34 times more likely to be hospitalised due to violence than non-First Nations women and 6 times more likely to die as a result of FDV.⁸
- A 2019 survey of people who identify as LGBTIQ+ found that 2 in 3 respondents (65%) had experienced some form of FDV.⁹
- People with disability are more likely to be victim-survivors of family, domestic and sexual violence (FDSV) than people without disability.¹⁰
- A Monash University study of women on temporary visas who sought support for family violence in 2015-2016 found that 2 in 5 (44%) of women were threatened by a partner or family member that sponsorship for their visa application would be withdrawn.¹¹

Benefits

- Reducing the negative impact of FDV on our community;
- Supporting survivors of FDV to access holistic services;
- Raising awareness of FDV as a major public health issue; and
- Ensuring that frontline workers have the resources and funding to do their best work.

Endnotes

1. Australian Bureau of Statistics, Personal Safety Survey, 2021-2022 <https://www.abs.gov.au/statistics/people/crime-and-justice/personal-safety-australia/latest-release#key-findings-violence-prevalence-and-changes-over-time>.
2. Australian Bureau of Statistics, Personal Safety Survey, 2021-2022 <https://www.abs.gov.au/statistics/people/crime-and-justice/childhood-abuse/latest-release>.
3. <https://www.wa.gov.au/organisation/department-of-communities/about-16-days-wa>.
4. Department of Communities, 'About 16 Days in WA' (Media Release, Government of Western Australia, 3 November 2023) <https://www.wa.gov.au/organisation/department-of-communities/about-16-days-wa>.
5. Department of Communities, 'About 16 Days in WA' (Media Release, Government of Western Australia, 3 November 2023) <https://www.wa.gov.au/organisation/department-of-communities/about-16-days-wa>.
6. Department of Communities, 'About 16 Days in WA' (Media Release, Government of Western Australia, 3 November 2023) <https://www.wa.gov.au/organisation/department-of-communities/about-16-days-wa>.
7. Department of Communities, 'About 16 Days in WA' (Media Release, Government of Western Australia, 3 November 2023) <https://www.wa.gov.au/organisation/department-of-communities/about-16-days-wa>.
8. Ministers for the Department of Social Services, 'First Nations-led data research on family, domestic, and sexual violence' (Media Release, Australian Government, 7 November 2023) <https://ministers.dss.gov.au/media-releases/13016>.
9. Australian Institute of Health and Welfare, 'LGBTIQ+ people', *Family, domestic and sexual violence* (Web page, 15 July 2024) <https://www.aihw.gov.au/family-domestic-and-sexual-violence/population-groups/lgbtiqa-people#violence>.
10. Australian Institute of Health and Welfare, 'People with disability', *Family, domestic and sexual violence* (Web page, 5 July 2024) <https://www.aihw.gov.au/family-domestic-and-sexual-violence/population-groups/people-with-disability>.
11. Australian Institute of Health and Welfare, 'People from culturally and linguistically diverse backgrounds', *Family, domestic and sexual violence* (Web page, 5 July 2024) <https://www.aihw.gov.au/family-domestic-and-sexual-violence/population-groups/calcd>.

MANDATORY SENTENCING

Mandatory sentencing conflicts with foundational justice principles in the International Covenant on Civil and Political Rights (ICCPR). Article 14(5) sets out the right of every person to be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. As a matter of principle, sentencing is the role of an independent judiciary, not the legislature.

Overview

Mandatory sentences refer to minimum sentences prescribed by the legislature for criminal offences.

An example of mandatory sentences is the 'Three Strike Rule' for burglary. Under section 401(4) of the WA *Criminal Code*, if a person is convicted of committing three separate home burglaries, the court must sentence the offender to a minimum of 2 years imprisonment. The sentencing judge does not have discretion to sentence the offender to a shorter period.

Mandatory sentences prevent judges from considering the personal circumstances and mitigating factors relevant to a person's offending. Mandatory sentencing laws therefore result in harsh and disproportionate sentences where the punishment may not fit the crime, and impose unacceptable restrictions on judicial discretion and independence, as well as undermining fundamental rule of law principles.

In 2012, the Committee on the Rights of the Child expressed concern that mandatory sentencing legislation in WA applied to persons under 18 and recommended the laws be abrogated.¹⁵

On its face, mandatory sentencing laws do not seem overtly discriminatory. However, these laws are undeniably discriminatory in their effect on Aboriginal and Torres Strait Islander people, and

Recommendation

Repeal all WA laws that impose minimum terms of imprisonment and commit to:

- Legislation to enforce the principle that imprisonment should be utilised only as a sanction of last resort;
- Flexible sentencing options for offenders; and
- Implementation alternatives to mandatory sentencing, such as justice reinvestment strategies and diversionary non-custodial options, which may be more effective for reducing crime while remaining compatible with the rule of law and Australia's human rights obligations.

especially Aboriginal and Torres Strait Islander young people. When the Royal Commission into Aboriginal Deaths in Custody released its final report in 1991, it made 339 recommendations and several addressed sentencing principles for Aboriginal and Torres Strait Islander people.

Recommendation 92 states *‘That governments which have not already done so should legislate to enforce the principle that imprisonment should be utilised only as a sanction of last resort.’*¹⁶

As a matter of principle, sentencing is the role of the judiciary, not the legislature. It is a principle of sentencing that imprisonment is the sentence of last resort. Some consider that to be implicit in subsection 6(4) of the *Sentencing Act 1995* (WA) which states:

‘A court must not impose a sentence of imprisonment on an offender unless it decides that –

(a) the seriousness of the offence is such that only imprisonment can be justified or

(b) the protection of the community requires it.’

Notwithstanding the Statutory Review of the *Sentencing Act 1995* (WA) by the Department of the Attorney General,¹⁷ the Law Society maintains that subsections 6(4) and 39(3) of the *Sentencing Act 1995* (WA) are not sufficient to carry the principle that imprisonment is a sentence of last resort.

If that is so, then the statute is internally inconsistent because when there is a mandatory minimum sentence of imprisonment then imprisonment is not the sentence of last resort – it is the first resort, and the only resort.

Endnotes

15. Committee on the rights of the Child, Concluding Observations: Australia, 60th sess, UN Doc CRC/C/AUS/CO/4 (28 august 2012) <https://www2.ohchr.org/english/bodies/crc/docs/co/CRC_C_AUS_CO_4.pdf>

16. Royal Commission into Aboriginal Deaths in Custody (Final Report, March 1991) <<https://www.austlii.edu.au/au/other/IndigLRes/rciadic/>>.

17. Department of the Attorney-General, *Statutory Review of the Sentencing Act 1995* (WA) (October 2013).

Benefits

- Ensuring sentencing is fair and proportionate to the crime committed;
- Reducing the likelihood of recidivism as prisoners are less likely to be placed in an environment which often fails to address the underlying causes of crime;
- Increasing community confidence in the judiciary and the criminal justice system as a whole;
- Allowing discretion from the judiciary without displacing it to other parts of the criminal justice system such as law enforcement agencies and prosecutors;
- Reducing the economic cost to the community in terms of reducing imprisonment rates and reducing the burden on the already under-resourced criminal justice system; and
- Reducing the discriminatory effect on Aboriginal and Torres Strait Islander people.

IMPLEMENTING RECOMMENDATIONS FROM THE ROYAL COMMISSION INTO ABORIGINAL DEATHS IN CUSTODY

The Royal Commission into Aboriginal Deaths in Custody was established in October 1987 in response to growing public concern about the number of deaths of Aboriginal and Torres Strait Islander people in police or prison custody. Its report in April 1991 made 339 recommendations, and while 78% of these recommendations have been fully or mostly implemented, the remaining are long overdue to be progressed.

Overview

The Royal Commission into Aboriginal Deaths in Custody was established in October 1987 in response to growing public concern around the number of deaths of Aboriginal and Torres Strait Islander people in police or prison custody. The National Report of the Royal Commission was released in April 1991 and made 339 recommendations.¹⁸ The Royal Commission's recommendations encompassed a broad range of themes focussed on improving the interaction of Aboriginal and Torres Strait Islander people with police and the justice system.

According to a 2017 report commissioned by the then Commonwealth Minister of Indigenous Affairs, on average only 78% of the Royal Commission's recommendations have been fully or mostly implemented.¹⁹ The implementation of all remaining recommendations must be progressed. Aboriginal and Torres Strait

Recommendation

Fully implement the recommendations of the *Royal Commission into Aboriginal Deaths in Custody*, including:

- Eliminating or minimising ligature points in prison cells; and
- Appropriately funding treatment programmes carried out by Corrective Services.

Benefits

- Reduced loss of life of Aboriginal and Torres Strait Islander people while in custody; and
- Enhanced public confidence in the criminal justice system by demonstrating commitment to addressing the disadvantage experienced by Aboriginal and Torres Strait Islander people at every level of the criminal justice system.

Islander people continue to be incarcerated at an alarmingly high rate compared to non-Indigenous people in Australia. Since the Royal Commission's report was handed down in 1991, at least 545 First Nations people have died in custody across Australia – many by suicide.²⁰ In 2022-2023 there were 21 Indigenous deaths in police custody, including 5 in WA prisons.

Recommendation 165: Prison cell safety

Recommendation 165 of the *Royal Commission into Aboriginal Deaths in Custody* called on Police and Corrective Services authorities to eliminate risk items in prisons which could be potentially used for self-harm, including ligature or 'hanging' points. The Coroner's Court of Western Australia recently released findings following the investigation of two ligature deaths in prisons.²¹ The issue has been described as 'a matter of the utmost urgency'. In both matters the coroners commented on the architecture of prison cells as a factor that contributed to the deaths.

As of September 2022, only 3.9% of cells at Hakea Prison have been fully-ligature minimised, and a staggering 39.1% of cells are not ligature minimised at all²². The incoming government must take urgent action to address this appalling situation.

Recommendation 119: Opportunities for parole

Recommendation 119 of the *Royal Commission into Aboriginal Deaths in Custody* called on Corrective Services to ensure Aboriginal people are not denied parole due to a lack of staff or infrastructure to monitor compliance with parole orders.

The Prisoner's Review Board (Board) has raised concerns that the inadequate resourcing of treatment programmes in WA prisons is affecting the accessibility of parole. The Board reported in 2021/2022 that 757 offenders were denied parole in circumstances where due to delays they had not been assessed for any treatment programmes.²³


This issue must be addressed as a matter of urgency. If prisoners are denied parole, they are denied the opportunity to reintegrate into the community in a structured and supervised manner and with appropriate restrictions in place.

Endnotes

18. Royal Commission into Aboriginal Deaths in Custody (Final Report, March 1991) <<https://www.austlii.edu.au/au/other/IndigLRes/rciadlc/>>.
19. Department of the Prime Minister and Cabinet, *Review of the implementation of the Royal Commission into Aboriginal Deaths in Custody* (August 2018) <<https://www.niaa.gov.au/resource-centre/review-implementation-royal-commission-aboriginal-deaths-custody>>.
20. Australian Institute of Criminology, *Deaths in Custody in Australia 2022-2023* (Statistical Report 2023) <https://www.aic.gov.au/sites/default/files/2023-12/sr44_deaths_in_custody_in_australia_2022-23.pdf>.
21. *Jomen Blanket* [2023] WACOR 6; *Wayne Thomas Larder* [2022] WACOR 48.
22. *Wayne Thomas Larder* [2022] WACOR 48 [136]
23. Prisoners Review Board, *Annual Report 2021/2022* (Report, September 2022) <https://www.prisonersreviewboard.wa.gov.au/files/PRB_Annual_Report_2021_22.pdf>.

The background of the page is a deep blue color. On the left side, there is a faint, stylized icon of a building with a gavel and scales of justice. In the lower right corner, there is a close-up, slightly blurred image of a pair of scales of justice and a gavel. A dark blue rectangular box is centered on the page, containing the text 'CIVIL JUSTICE REFORM' in white, bold, uppercase letters. A thin orange horizontal line is positioned below the text.

CIVIL JUSTICE REFORM



Civil justice reform in the areas of human rights, equal opportunity, elder law and relationship evidence will ensure that everybody is treated equally before the law, and that the law does not place undue administrative burdens on people who don't follow historical societal norms such as marriage and heteronormative relationships.

A WESTERN AUSTRALIAN HUMAN RIGHTS ACT

A *WA Human Rights Act* is necessary to ensure the protection of people's human rights and to create an avenue for raising complaints if human rights are breached. A *Human Rights Act* would promote a culture of respecting people with fairness, dignity and respect.

Overview

Australia is the only liberal democracy not to have a national act or charter of human rights protection. Instead Australia has a patchwork system of constitutional and common law rights, international treaties and legislation. In 2024 the Parliamentary Joint Committee on Human Rights (Joint Committee) completed an inquiry into the effectiveness of Australia's current Human Rights Framework and considered whether the Framework should be restructured or improved.²⁴

The Joint Committee concluded that the current framework does not adequately ensure that human rights and freedoms are adequately respected, protected or promoted, and recommended that an Australian *Human Rights Act* should be enacted to ensure the comprehensive and effective protection of human rights.

Although the Joint Committee's May 2024 report is generating meaningful discussions about the need for an Australian *Human Rights Act*, it is unclear if and/or when the Australian Government will implement this recommendation, and what protections would extend to state legislation under an amended national framework.

Recommendation

Introduce a *WA Human Rights Act* to improve respect, promotion and protection of human rights in WA.

Benefits

- Improving the accessibility of human rights protections and remedies in the event that a person's human rights are breached;
- Promoting a rights respecting culture within the incoming government by creating an expectation that human rights will be considered throughout the political process; and
- Creating a framework to proactively consider the effect of government action on individuals ahead of any dispute.

Therefore, it is appropriate to consider whether the incoming government should also introduce a *Human Rights Act* for WA.

In 2007, the WA Government initiated a community consultation on the introduction of a *Human Rights Act* in WA. Following the consultation, the consultation committee recommended that the WA Government introduce a *Human Rights Act*.²⁵ However, this recommendation has never been implemented. As a result, there is no formal oversight of State legislation for compatibility with the WA Government's human rights obligations and no protections for many basic human rights.

In recent years, the Australian Capital Territory (ACT), Victoria and Queensland have developed state/ territory human rights legislation. The key functions of the ACT *Human Rights Act*, the *Victorian Charter*, and the *Queensland Human Rights Act* are to ensure:

- public authorities properly consider human rights when making laws, developing policies, delivering services and making decisions; and
- act compatibly with human rights.

These state and territory based models can provide guidance to the incoming government on developing human rights legislation for WA.

Endnotes

24. Parliamentary Joint Committee on Human Rights, Parliament of Australia, *Inquiry into Australia's Human Rights Framework* (Parliamentary Paper, May 2024) <https://parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/RB000210/toc_pdf/InquiryintoAustralia'sHumanRightsFramework.pdf>.

25. Government of Western Australia, *Report of the Consultation Committee for a Proposed WA Human Rights Act* (November 2007) <<https://alhr.org.au/wp/wp-content/uploads/2017/03/Annexure-1-WA-Government-Consultation-Committee-for-a-Proposed-WA-Human-Rights-Act-Final-Report-November-2007.pdf>>.

EQUAL OPPORTUNITY ACT REFORM

The Law Society supports the Implementation of the Law Reform Commission's 2022 recommendations that legislative protections within the *Equal Opportunity Act 1984* are extended to ensure more people are protected from harassment and discrimination.

Overview

The LRC completed a review of the Act in May 2022 and made 163 recommendations to improve protections against discrimination, harassment and vilification.²⁶ The incoming government now has the opportunity to modernise the Act and condemn harassment and discrimination in the community and workplaces.

The LRC's recommendations cover a range of topics including improving protections for people who identify as LGBTIQ+, and people who have experienced sexual harassment.

The Law Society acknowledges the introduction of the *Births, Deaths, Marriages Registration Amendment (Sex or Gender Changes) Bill 2024* to abolish the Gender Reassignment Board (GRB) and the requirement for a person to have undergone medical or surgical reassignment before formally registering a change of sex or gender. However, further reforms are required to support transgender, non-binary and intersex people and the broader LGBTIQ+ community in WA. In particular, the LRC recommended limiting the exemption for religious educational institutions which allows these institutions to discriminate against students and staff on the basis of their religious beliefs. The current exemption allows institutions to fire staff and expel students if that person or their family member identifies as LGBTIQ+.

Recommendation

Implement amendments to the *Equal Opportunity Act 1984* (Act) recommended by the Law Reform Commission (LRC) in 2022.

Benefits

- Greater protections for the LGBTIQ+ community;
- Removing barriers to raising complaints about sexual harassment;
- Extending protections against sexual and racial harassment to more people; and
- Strengthening deterrents against discriminatory conduct.

More broadly, there are certain job positions and workplaces which are not covered by protections against, or prohibitions of, sexual and racial harassment. The LRC has recommended that protections are extended to include members of parliament, parliamentary staff, judicial officers and court staff, and unpaid and volunteer workers. These groups should not be excluded from protection from and accountability for racial and sexual harassment in their workplaces.

The LRC has also recommended amending the test applied to sexual harassment complainants. Currently complainants must prove that they experienced disadvantage because of the harassment, which will vary greatly depending on the complainant's circumstances. The LRC recommends that this test be amended to place a greater emphasis on the harmful conduct, rather than the disadvantage it caused.

Under the Act, if the State Administrative Tribunal conducts an inquiry and finds that a complaint has been substantiated, the maximum amount of compensation that can be ordered is \$40,000. An order for maximum compensation is usually reserved for the most egregious cases of discrimination. The limit of \$40,000 was set at the commencement of the Act in 1985 and has not been updated since. In 2024, \$40,000 is woefully inadequate compensation for a person who has experienced egregious discrimination, or as a deterrent of discriminatory behaviour.

Endnotes

26. Law Reform Commission, *Review of the Equal Opportunity Act 1984 (WA)* (Project 111 Final Report, May 2022) 275 <https://www.wa.gov.au/system/files/2022-08/LRC-Project-111-Final-Report_0.pdf>.

AMENDMENTS TO ELDER LAW LEGISLATION

The Law Society has long supported legislative reforms to elder and succession law in WA. Some of the most pressing reforms which the Law Society is advocating for are to the *Wills Act 1970*. These proposed reforms will enable wills to be made by minors in certain circumstances, clarify the circumstances in which wills may be released and revise the requirement to establish parentage during the parent's lifetime.

Overview

The Law Society has long advocated for elder law legislative reforms to address issues that arise in relation to wills for minors, release of wills and paternity requirements. These reforms will provide clarity to practitioners when dealing with difficult case circumstances, ensure that the interests of potential beneficiaries and donees are protected, and bring the law into line with common societal practices in relation to romantic and familial relationships.

Wills for minors

The *Wills Act 1970* (WA) provides that a will made by a person under 18 years is not valid and the court does not have authority to make a statutory will for a minor. However, there are circumstances where it is not appropriate for a minor's estate to benefit one or other members of their immediate family. The Law Society recommends that the *Wills Act* be amended to allow a minor to make a will or apply to the court to authorise the making of a statutory will.

Recommendation

Implement legislative amendments relating to elder law as follows:

- Amendment to the *Wills Act 1970* (WA) to enable wills made by a person under the age of 18 to be valid (in certain circumstances);
- Amendment to the *Wills Act 1970* (WA) and other relevant legislation to allow the release of wills to persons with a legitimate interest (in certain circumstances); and
- Amendment to the *Wills Act 1970* (WA), the *Administration Act 1903* (WA) and other relevant legislation to allow paternity to be recognised after a parent's death for the purpose of determining who is entitled to participate in the distribution of the intestate estate.

Example situations where it may be appropriate for a minor to have a will include the following:

- Where a minor is married and has responsibilities towards a spouse or, potentially, a child;
- Where a minor who has testamentary capacity has valid reasons for not wishing to consider one or other of their parents or siblings as beneficiaries of their estate, for example if they have received compensation for familial abuse, such a will requiring court authorisation; and
- Where a minor is incapacitated and it is appropriate to consider which family members have a moral claim (or lack of a moral claim) to the child's estate, such a will being made with court authorisation.

Release of wills

Currently, it is not clear when a will may be released to a third party in circumstances where it may be in the testator's best interests for the will to be released.

For example, it can be difficult for custodians of a will to navigate situations where a testator does not have capacity and the contents of the will are relevant to informing the proper discharge of an administrator's or attorney's obligations towards the testator.

There are also situations where the appointed executor is unable to fulfill their duties because they lack capacity or have predeceased the testator. In this scenario it is unclear who should be provided with a copy of the will.

New provisions to address each of these issues could easily be modelled on those already adopted in other jurisdictions.

Paternity requirements

The requirement that parentage be admitted by or established against the parent during the lifetime of the parent is unduly restrictive, particularly considering the availability of reliable and accurate DNA testing. This could be as simple as altering the relevant wording in section 12(2)(b)(i) of the *Administration Act* to read as follows:

Benefits

- Safeguarding the interests of children and adults who lack testamentary capacity;
- Bringing WA legislation in line with community expectations and practices in other jurisdictions; and
- Providing clarity to practitioners navigating difficult circumstances not contemplated by existing legislation.

(i) if parentage is admitted by the parent during the parent's lifetime, or established against the parent, whether before or after the death of the parent.

The *Wills Act 1970* (WA) and the *Family Provision Act 1972* (WA) both include provisions with similar wording and effect to s12A.²⁷ Should the *Administration Act* be amended, similar provisions in these acts, and other acts related to succession, should also be amended to maintain consistency.

Endnotes

27. *Wills Act 1970* (WA), s 32(2)(b); *Family Provision Act 1972* (WA), s 7(1)(e).

RELATIONSHIPS REGISTER

A Relationships Register provides for the legal recognition of relationships other than marriage and allows for acknowledgement of diverse family groups. A Relationships Register would facilitate access to rights and entitlements for civil partners in legal matters.

Overview

Relationships Registers have been enacted by legislation in the majority of other states and territories for many years: Tasmania (2003); Victoria (2008) New South Wales (2020); Queensland (2011); Australian Capital Territory (2012); and South Australia (2016).²⁸ Establishment of a Relationships Register would align WA with the rest of Australia (apart from the Northern Territory).

A Relationships Register can be used to provide evidence of partner relationships as part of the requirements of the *Migration Act 1958* (Cth). In a family law context, depending on the content of the legislation, registration would be a useful evidentiary tool to prove the existence of a de facto relationship as at a point in time.

There are many occasions where a de facto couple is required to establish the relationship - for example, to meet the requirements of the *Migration Act 1958* (Cth), to facilitate access to rights and entitlements in legal matters and in applying for social benefits. For a de facto partner of an Australian citizen to apply for a Partner visa to live in Australia, the applicant must be in a de facto relationship that meets a number of criteria, including that the de facto relationship must have existed for at least 12 months immediately before applying for the visa (subject to certain exceptions). This 12-month period requires the provision of evidentiary

Recommendation

Establish a WA Relationships Register.

Benefits

- Alignment with the law in the majority of Australian States and Territories;
- Provide evidence to support legal recognition of de facto relationships;
- Acknowledgement of diverse family groups; and
- Facilitation of rights and entitlements for civil partners in legal matters.

support that can be difficult to obtain. The 12-month requirement does not apply if the de facto relationship is a registered relationship within the meaning of section 2E of the *Acts Interpretation Act 1901*, which provides that a person is in a registered relationship if it is 'registered under a prescribed law of a State or Territory as a prescribed kind of relationship'. However, this option is not available in WA as there is no Relationships Register.

Under Part 5A – de facto relationships – of the *Family Courts Act 1997* (WA), for the court to make an order there are further criteria that must be satisfied in respect to the de facto relationship over and above the eligibility criteria for registration under the relevant statutes. However, registration would at least be a useful evidentiary tool to prove the existence of a de facto relationship as at a point in time. Section 13A of the *Interpretation Act 1984* (WA) which sets out criteria for establishment of a de facto relationship may need to be amended to include registration as a specific factor for the court to consider.

Endnotes

28. *Relationship Act 2008* (VIC); *Relationships Register Act 2010* (NSW); *Civil Partnerships Act 2011* (QLD); *Civil Unions Act 2012* (ACT); *Relationships Register Act 2016* (SA).

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