

Policy and Practice Department

Summary of submissions since July 2020

Procedural reforms in the federal courts in response to COVID-19

The Family Law Committee and the Litigation Law and Procedure Committee contributed to a submission to the Law Council regarding procedural reforms in the federal courts in response to COVID-19 and which measures should appropriately continue beyond lockdown measures.

We agreed with the LCA that the use of video link and teleconferencing during the pandemic has ensured matters can progress despite difficult circumstances, and has improved efficiencies and accessibility in many cases. The potential disadvantages of the use of virtual hearings and teleconferencing include disruption to the dispute resolution process; risks to open justice and fairness; and loss of valuable opportunities for parties to discuss matters in person. While for certain procedures these disadvantages can be outweighed by the cost and time savings to the parties, we suggested that contested hearings should continue to be conducted face to face. The Law Society made several suggestions for circumstances where virtual hearings should be maintained.

In the context of family law proceedings, we considered that first return dates, procedural or directions hearings, interim hearings and straightforward matters such as divorce and simple property matters would work well in the electronic medium. We supported the move in some Family Court registries towards providing subpoena material electronically and suggested this practice be standardised and continued.

The Child Protection (Offenders Registration) Act 2000 – referral to the NSW Law Reform Commission

The Law Society wrote to the Attorney General in relation to the Law Enforcement Conduct Commission's (LECC) Final Report into the NSW Police Force's administration of the NSW Child Protection Register (Operation Tusket), which was handed down in October 2019.

The LECC found that since 2002, the NSW Police Force had made over 700 incorrect decisions about either which persons needed to be included on the Child Protection Register, or the length of their reporting periods. The LECC made a number of recommendations to notify those affected, rectify past errors and lower the risk of future mistakes.

The LECC found that a contributing factor to the problem was that the Child Protection (Offenders Registration) Act 2000 is so complex and ambiguous in important respects that it creates an inherent risk of errors in the Child Protection Register that the NSW Police Force cannot mitigate. We noted that the LECC recommended that the legislation be referred to the NSW Law Reform Commission for comprehensive review as a matter of urgency. The Law Society expressed its support for such a reference, and willingness to participate in any review of the Act.

Inquiry into the provisions of the Firearms and Weapons Legislation (Criminal Use) Bill 2020

The Criminal Law Committee contributed to a submission to the Parliamentary Inquiry into the provisions of the Firearms and Weapons Legislation (Criminal Use) Bill 2020 (the Bill). The Law Society submitted that the proposed penalty of 20 years imprisonment for taking part in the manufacture of a weapon, weapon part, firearm or firearm part (regardless of whether a weapon, weapon part, firearm or firearm part is actually manufactured) is disproportionate, noting that it is egregious that a person could be sentenced to a maximum of five years imprisonment for actual firearms parts possession, but up to 20 years for possession of a picture of how to make one. We submitted that the offences should be tailored to cover the broad spectrum of offending covered by the proposed provisions.

The Law Society made a number of suggestions in relation to Firearms Prohibition Orders (FPOs), including support for the Ombudsman's recommendation that an FPO should expire after five years from the date it is served - currently FPOs apply for life or until revoked. Similarly, we supported the implementation of the Ombudsman's recommendation for a further independent and objective evaluation of the effectiveness of FPO search powers once they have been in operation at least five years.

We submitted that FPOs and Weapon Prohibition Orders (WPOs) should not be made in relation to children. We submitted that the general ineligibility of children to attain firearm and weapon permits is sufficient to meet the relevant policy aims, and there is not a sufficient case for children to be subject to either FPOs or WPOs.

Review of AFP Powers

The Criminal Law Committee contributed to a submission to the Law Council of Australia in relation to the Parliamentary Joint Committee on Intelligence and Security review into the operation, effectiveness and implications of:

- Division 3A of Part IAA of the Crimes Act 1914 (which provides for police powers in relation to terrorism) and any other provision of the [Crimes Act 1914](#) as it relates to that Division; and,
- Divisions 104 and 105 of the Criminal Code (which provide for control orders and preventative detention orders in relation to terrorism) and any other provision of the [Criminal Code Act 1995](#) as it relates to those Divisions.

We submitted that any broadening of the Commonwealth scheme should be accompanied by significant tightening (or repeal) of the NSW scheme, which has a lower threshold for eligibility and determination of future risk of terrorist offending. The submission discussed cases that highlight the breadth of the NSW scheme, and raise concerns that it is not appropriately targeted to high risk terrorist offenders.

Inquiry into assaults on members of the NSW Police Force

The Legislative Assembly Committee on Law and Safety is holding an Inquiry into assaults on members of the NSW Police Force. The Criminal Law Committee contributed to a submission that suggested that the focus of the Inquiry should be on community, preventative and educative initiatives as the best means to reduce the incidence of assaults.

We noted that defendants already appear to receive harsher sentences when assaults are against police officers, and there is therefore no need to increase maximum penalties. The Law Society considers that increasing a maximum penalty does not have a significant deterrent effect in relation to offences that are not pre-meditated or where offenders suffer from a mental condition.

We asked that the Inquiry bear in mind that police are often encountering vulnerable people including young people, Indigenous people, and people with a cognitive impairment, at a vulnerable point in their lives. A nuanced approach is warranted, in order to differentiate between assaults that are brazen attacks on police officers, compared to incidents of vulnerable people reacting to stressful situations. In our view, the existing maximum penalties for the various offences provide sufficient discretion for the courts to adequately punish even the most serious of attacks.

Flood Prone Land Package

The Environmental Planning and Development Committee contributed to a submission to the Department of Planning, Industry and Environment on proposed changes to update the Flood Prone Land Package, which provides advice to councils on considering flooding in land use planning.

Schedule 4 of the Environmental Planning and Assessment Regulation 2000 will be amended by the (yet to be drafted) Environmental Planning and Assessment Amendment (Flood Related Development Controls Information) Regulation 2020. We noted the difficulty in commenting without seeing the exact wording of these amending provisions, particularly considering there is a choice between the types of flood related development controls that are to be noted on planning certificates by councils.

While we support the consideration of climate change as part of the criteria in the decision-making process included in the proposed local environmental plan clauses, in our view, the test in relation to special flood considerations does not provide sufficient flexibility. We suggested that there needs to be an appropriate threshold test for where a consent authority must be satisfied that the proposed development will not adversely affect the environment. The test should be whether the matter is “likely” to affect the environment.

Review of Infrastructure Contributions in NSW – Issues Paper

The Environmental Planning and Development Committee contributed to a submission in response to the NSW Productivity Commission’s Issues Paper, as part of the Commission’s review of the infrastructure contribution system in NSW (“Review”).

The Review coincides with system improvements led by the Department of Planning, Industry and Environment. We forwarded the Law Society’s submission in response to the Department’s public consultation on a package of reforms designed to improve the existing infrastructure contribution system, noting the proposed reforms are iterative and complementary to this Review. The earlier submission addresses some of the key issues identified within the current infrastructure contribution mechanisms explored in Chapter 3 of the Issues Paper.

Interim Report of the Independent Review of the Environment Protection and Biodiversity Conservation Act 1999 (Cth) (“EPBC Act”)

The Environmental Planning and Development Committee contributed to a submission providing input into the Law Council’s submission to the Independent Reviewer in response to the Interim Report of the Independent Review of the EPBC Act.

The Law Society welcomed the Interim Report and endorsed the findings of the Review. In particular, we recognised that regulators are under-resourced, offsets are inadequate for providing the required habitat restoration, duplication between State / Territory legislation is hindering the objectives of the EPBC Act and that the EPBC Act has failed to fulfil its obligations as they relate to Indigenous Australians and their cultural heritage. We supported the development of National Environmental Standards and the suggested improvements to the

administration of the EPBC Act to enable it to be better utilised to protect and enhance Australia's unique environment.

The submission stated that additional and ongoing funding is urgently required to deal with the challenges identified in the Interim Report. Legislative reform, guided by the Review, alone, is not sufficient to meet the challenge of protecting the environment and Australia's iconic places in the national interest.

Proposed Natural Disasters Clause

The Environmental Planning and Development Committee contributed to a submission to the Department of Planning, Industry and Environment commenting on a proposed optional provision for inclusion in the Standard Instrument (Local Environmental Plans) Order 2006, to support the rebuild and repair of dwellings following a natural disaster.

The Law Society noted the merit in the proposal, which enables councils to elect whether the optional provision should be inserted into their Local Environmental Plan and to nominate which zones the clause will apply to. However, the submission noted that its application may still be problematic in some cases. Although councils can exempt land within certain zones, some land within the zoning designated by a council as permitted for this purpose might still be unsuitable, for example as 'bushfire prone land' or 'flood prone land'. While any application would be considered on its merits, it may be useful to have an additional or alternative opt out mechanism for land in high risk categories (i.e. high risk of flooding, coastal erosion, or bushfire).

The submission also suggested that the drafting of the clause may need tightening to prevent an application which involves moving the dwelling to a different location or erecting a replacement dwelling in lieu of one that was merely damaged, but still repairable.

Proposed New Housing Diversity SEPP

The Environmental Planning and Development Committee contributed to a submission to the Department of Planning, Industry and Environment on the Explanation of Intended Effect ("EIE") for a new Housing Diversity State Planning Policy ("SEPP"), designed to consolidate and update the Government's housing-related policies. The changes also aim to assist the State's economic recovery following the COVID-19 pandemic. The new SEPP introduces some new categories of development and 'Build-to-rent', in particular, has been identified as an opportunity for stimulus.

The draft submission commented on some of the specific proposals relating to the changes to the existing policies and to the new categories of development. We reiterated our previously expressed concern about the practice of publishing lengthy EIE documents in place of the draft amending legislation.

The practical implications of changing the definition of 'boarding house' to require boarding houses to be managed by a community housing provider will need to be further clarified. While the proposal is supported, it is suggested that this requirement be accompanied with a savings and transitional provision that means that all boarding houses approved prior to the proposed new SEPP eventually coming into force can maintain their current management structure.

Rural Fires Amendment (NSW RFS and Brigades Donations Fund) Bill 2020

The Business Law Committee partnered with the Charities & Not for Profits Committee of the Legal Practice Section of the Law Council of Australia to contribute to a submission to the Legislative Council's Portfolio

Committee No 5-Legal Affairs, in relation to the Private Member's Bill. The Law Society also provided representatives to attend a hearing of the Parliamentary inquiry into the Bill.

The Bill purports to provide the trustees of the NSW Rural Fire Service and Brigades Donations Fund Trust Deed with powers to apply relevant trust money for a range of additional purposes. However, those purposes do not appear to be framed within the limits of accepted charitable purposes either at the state level or under the Charities Act 2013 (Cth).

Maintaining the charitable status (and compliance with the original charitable terms of the Trust Deed) is relevant for registration with the Australian Charities and Not-for-profits Commission and the Australian Taxation Office, with failure to comply meaning the potential loss of tax concessions. This is also relevant for NSW state tax purposes, as charities can potentially benefit from payroll tax (though volunteer firefighter bodies can also qualify), land tax and duties concessions.

Major Reforms to the Foreign Investment Review Framework

The Business Law Committee contributed to a submission to the Commonwealth Treasury in response to the release of the exposure draft of the Foreign Investment Reform (Protecting Australia's National Security) Bill 2020 ("Bill"), which is proposed to amend the Foreign Acquisitions and Takeovers Act 1975 (Cth) ("FATA").

The submission expressed the concern that the proposed amendments grant the Treasurer broad discretion to collect information during foreign investment applications, which may be used for unrelated purposes, particularly in the tax jurisdiction. In the interests of procedural fairness, the Law Society suggested that this information should not be used for any other purpose and that the Inspector-General of Taxation and Taxation Ombudsman's Office be granted oversight of this process.

The reforms contemplate the creation of a register of foreign ownership, which would record certain actions taken by foreign persons ("Register"). The submission suggested that where a change of ownership occurs, the Register should also include the conditions included in the notification relating to the acquisition or disposal of an interest. The submission also commented on the definition of "national security business" contained in the proposed amendments to the Foreign Acquisitions and Takeovers Regulation 2015.

Continuing the Productivity Conversation – Productivity Commission Green Paper

The Law Society members of the Revenue NSW/Law Society Liaison Committee and the Business Law Committee contributed to a submission to the NSW Productivity Commission in response to the Green Paper.

The Law Society supported the extension of the operation of temporary COVID-19 regulatory changes, including temporary adjustments to legal formalities, such as digital solutions to replace paper-based reporting, physical witnessing and attestation of documents and various other in-person requirements for 12 months, to evaluate their success, with a view to retaining any measures where a net public benefit is demonstrated.

While we noted our support for the courts retaining the facility to conduct procedural, directions and interim hearings and other simple processes electronically where there is an emphasis on case management, we stated that, in our view, video links or teleconferencing are not appropriate for contested hearings in any of the courts.

We noted that the outcome of a review by the Commonwealth Department of Home Affairs on critical infrastructure assets will impact on the definition of assets which are of “national interest” under Australia’s Foreign Investments regime and will be of interest in any evaluation of NSW’s water and infrastructure assets.

We broadly supported part of draft Recommendation 8.1 - Replace inefficient taxes with more efficient ones. In relation to transfer duty, we expressed reservations about replacing transfer duty with a broad-based land tax. The impact of any such changes upon existing and future landowners needs to be carefully considered and balanced.

We supported the abolition of insurance duties and the continued harmonisation of payroll tax legislation and administration. We noted that even where legislation has been harmonised with other jurisdictions, there are differences in the application of the legislation which compromise the benefits and efficiencies that can be gained from harmonisation.

Inquiry into family, domestic and sexual violence

The Family Law, Children’s Legal Issues, Indigenous Issues and Criminal Law Committees contributed to a submission to the Law Council regarding the Standing Committee on Social Policy and Legal Affairs Inquiry into family, domestic and sexual violence.

In response to the Inquiry’s Terms of Reference, the Law Society suggested the following immediate and long-term measures to help reduce the prevalence of domestic and family violence (DFV):

- a national definition of DFV which incorporates all forms of family violence;
- better integration of the family law, family violence and child protection jurisdictions;
- increased information sharing between the family law system, state and territory child protection systems and criminal law systems;
- sustainable funding for DFV services and programs;
- the resourcing of support services to help victims access basic necessities such as accommodation and financial support;
- sustainable funding for accessible, appropriate and proportionate legal services which are coordinated with other support services;
- improved services for vulnerable groups, including Indigenous people, women on temporary visas and those affected by COVID-19 and the recent bushfire season;
- funding for programs focused on achieving cultural change through community-based messaging about attitudes to DFV;
- behaviour change programs which are consent-based and integrated with broader services focused on related issues such as homelessness and addiction;
- improved national data relating to DFV including Australian Bureau of Statistics data;
- mandatory education for legal professionals in regard to DFV; and
- a greater focus on programs relating to young people who use family violence.

Review of the declared area provisions

The Committee contributed to a submission to the Law Council regarding the statutory review of the declared area provisions at ss 119.1 and 119.3 of the Criminal Code Act 1995 (Cth) (“declared area provisions”) being undertaken by the Parliamentary Joint Committee on Intelligence and Security.

The declared area provisions were introduced by the Counter-Terrorism Legislation Amendment (Foreign Fighters) Act 2014 (Cth). The stated objective of the provisions is to deter Australian citizens from travelling to areas where listed terrorist organisations are engaged in hostile activities unless they have a legitimate reason to do so.

The Law Society's submission argued that the declared area provisions should not be extended, or, alternatively, should be repealed before the sunset clause takes effect in September 2021, for three reasons:

- The adequacy of other federal legislation including the Counter-Terrorism (Temporary Exclusion Orders) Act 2019 (Cth) and the Australian Citizenship Act 2007 (Cth);
- The low utilisation of the declared area provisions; and
- The disproportionate impact of the declared area provisions on human rights.

Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020

The Human Rights, Public Law and Employment Law Committees contributed to the Joint Select Committee on the Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020 (NSW) ("the Bill").

The submission stated that while the Law Society supports legislative protections for the right against religious discrimination and the right to freedom of religion, the Bill should not be passed in its current form, due to definitional issues and difficulties that may arise if the Bill were to be enacted.

The Law Society expressed the view that any reforms to the anti-discrimination framework in NSW should be conducted in a comprehensive manner. The Law Society also noted that the most recent review of the Anti-Discrimination Act 1977 (NSW) took place over 20 years ago, and we suggested that a detailed review of the Act would be timely and constructive.

Inquiry into the destruction of 46,000 year old caves at Juukan Gorge in the Pilbara Region of Western Australia

The Indigenous Issues Committee contributed to a Law Society submission to the Law Council of Australia.

The Law Society's submission commented on what ought to be protected, and then provided details on the shortcomings of the NSW Aboriginal cultural heritage protection scheme, which currently sits within the National Parks and Wildlife Act 1974 (NSW). The key shortcoming of the scheme is that there is no legislated process for Aboriginal people participate in the protection of Aboriginal cultural heritage, nor to veto the destruction of Aboriginal cultural heritage. The Law Society's submission noted that the question of who the appropriate Aboriginal people to make decisions on Aboriginal cultural heritage will be a matter for each state or territory.

Draft Indigenous Evaluation Strategy

The Indigenous Issues Committee contributed to a Law Society submission to the Productivity Commission. The Law Society's submission provided broad support for the draft Indigenous Evaluation Strategy, noting that it would be consistent with Australia's obligations under the UN Declaration on the Rights of Indigenous Peoples. The Law Society's submission made a number of comments in respect of the following: ensuring adequate resourcing for Aboriginal and Torres Strait Islander peoples to bear the additional data management burdens; ensuring that the governance body responsible for oversight of evaluation communicate with the relevant state and territory agencies: to include as a system priority evaluation of finding strategies for Indigenous policies and programs,

particularly the Indigenous Advancement Strategy; and in future iterations of the draft Indigenous Evaluation Strategy including as an Action making evaluation outcomes pertinent to funding decisions.

Administrative review of the Bail Act 2013

The Criminal Law, Children's Legal Issues and Indigenous Issues Committees contributed to a submission to the review of the Bail Act 2013.

The Law Society expressed its concern about the high and growing remand population in NSW, and the significant work that needs to be done to reduce the remand population through both legislative and non-legislative reform. Such work has become more of an imperative as a result of the COVID-19 pandemic, which has highlighted the potential impacts to both individuals and the broader community of prison overcrowding. We noted that the pandemic is both a catalyst and an opportunity for wholesale change to the criminal justice system, including bail processes as the entry point to that system.

The submission focussed on priority areas for legislative reform, including amendments relating to bail applications and actions for breaches, as well as detailed comments on a proposed new division specifically related to bail and children. In relation to non-legislative reform, we supported the investment in, and implementation of, practical measures to provide support for defendants in the community and assist with compliance with bail conditions to reduce the number of technical breaches.

Inquiry into the high level of First Nations people in custody and oversight and review of deaths in custody

The Indigenous Issues, Criminal Law, Public Law and Children's Legal Issues Committees contributed to the Law Society's submission.

The submission identified key pressure points for reform based on impact, as well being suited to more immediate implementation:

- Aboriginal and Torres Strait Islander community empowerment, noting the particular issue of reconsidering the approach to funding programs based on supporting community strengths and a justice reinvestment approach
- Addressing the rates of Aboriginal and Torres Strait Islander children entering the care and protection system, noting the downstream effects on education access and the drift into the criminal justice system
- Indigenous specific sentencing courts
- Bail reform
- Sentencing reform
- Indigenous experience reports
- Support and diversionary services
- The availability of mental health care in custody
- Policing

Oversight of the criminal justice process, starting at police interactions. In this regard, the submission suggests that the Joint Select Committee request information from the oversight agencies named in the terms of reference to map the responsibilities of each agency in respect of the relevant touchpoints in the criminal justice system.

Draft State Strategy for Crown Land

The Indigenous Issues and Rural Issues Committees contributed to the Law Society submission. The Crown Land Management Act 2016 (NSW) requires the NSW Government to create a State Strategic Plan for Crown Land. The Department of Planning, Industry and Environment has produced a Draft Plan.

The submission generally supported the Draft Plan, which recognises that resolving existing Aboriginal interests in Crown land will be of benefit to Aboriginal people, as well as the people of NSW more generally. The Law Society's comments were directed at matters that have not been dealt with in detail and were provided for consideration in the implementation of the strategies set out in the Draft Plan. The comments dealt with suggestions in respect of how to expedite Aboriginal land transfers in respect of claims made successfully under the Aboriginal Land Rights Act 1983 (NSW), and planning and zoning issues consequent upon Aboriginal land transfers. The submission also requested more clarity in respect of how certain existing tensions and ambiguities (in respect of native title interests, and co-management of Crown land) will be addressed.

Inquiry into the reputational impact on an individual being adversely named in the ICAC's investigations

The Public Law Committee contributed to the Law Society's submission, which

- made general comments in respect of the importance of the ICAC in maintaining public confidence in the integrity of government institutions;
- set out the Law Society's support for the capacity of ICAC to hold public hearings;
- made observations in respect of the existing safeguards in respect of mitigating the risk to reputational damage as a result of an ICAC investigation.

The submission's overall position was that the recent legislative and operational changes have struck a better balance between the ICAC's objectives and the risk to reputational damage, and that current measures to ensure procedural fairness should be continued.

Inquiry into the Australia's Foreign Relations (State and Territory Arrangements) Bill 2020 and Australia's Foreign Relations (State and Territory Arrangements) (Consequential Amendments) Bill 2020

The Public Law Committee contributed to a Law Society submission to the Law Council on these Bills, which seek to establish a legislative mechanism for the Minister for Foreign Affairs, on behalf of the Commonwealth, to assess and manage the effect of 'core' and 'non-core' foreign arrangements, including determining whether those arrangements adversely affect Australia's foreign relations or are inconsistent with Australia's foreign policy. This scheme would allow for Commonwealth engagement with arrangements between State or Territory governments and foreign governments – including entities that are associated with State or Territory governments such as local councils and Australian public universities. The framework seeks to ensure that such arrangements are not negotiated, entered or continue in operation where they adversely affect Australia's foreign relations and are not inconsistent with Australia's foreign policy.

The Law Society's position was that the Bill should not be passed in its current form. While the Bills are likely to be constitutionally valid, they are unlikely to be necessary given the existing Foreign Influence Transparency Scheme. Further, the scope of the Bills is uncertain, due to legislative drafting, as well as the deferral of substantive matters

to subordinate legislation. Finally, the Bills excludes the Minister from procedural fairness requirements, as well as excludes the Bills from the operation of the Administrative Decisions (Judicial Review) Act 1977 (Cth).

Inquiry into the impact of technological and other change on the future of work and workers in NSW

The Privacy and Data Law contributed to a submission to the Select Committee on the impact of technological and other change on the future of work and workers in New South Wales (Select Committee).

Our submission focused exclusively on issues around workplace surveillance and suggested that:

- while there may be legitimate reasons for employers to undertake surveillance of employees, the current workplace surveillance framework should be reviewed and revised,
- in addition to the current ‘notice and consent’ framework, a new legal requirement of organisational accountability should be created, which would require an employer to ensure that workplace surveillance is reasonable, necessary, and proportionate to addressing a bona fide business interest,
- consideration be given to incorporating the provisions of the Workplace Surveillance Act 2005 (WSA) into a separate Division of the Surveillance Devices Act 2007 (SDA),
- the Standing Committee consider the provisions of the SDA, and, where feasible, adopt an approach to regulation similar to the one recently recommended by the Queensland Law Reform Commission (with an additional organisational accountability requirement),
- a civil remedies framework be introduced for contraventions of workplace and general surveillance laws, and
- the NSW Privacy Commissioner be imbued with additional complaints handling, guidance, monitoring and regulatory functions over workplace and general surveillance laws.

Elder abuse of clients - what support can solicitors offer?

Published on the Law Society website in September 2020, this paper offers guidance for practitioners on how to respond to, and potentially report, instances of elder abuse without being in breach of legal professional obligations. It includes three hypothetical case studies, a list of referral agencies and extracts of the relevant legislation.

The paper was prepared by a working group consisting of representatives of the Elder Law Capacity & Succession Committee, the Ethics Committee, and a representative of the NSW Ageing and Disability Commissioner.

Centrelink Clearance Recovery Notices delays

The Injury Compensation Committee contributed to a letter to the Minister for Government Services (Cth), the Hon Stuart Robert MP, to advise of significant delays in the issuance of Centrelink Clearance Recovery Notices.

The letter outlined that while issues with delays have existed for some time, the current pandemic has exacerbated the delays and there is now a two to three-month delay in the issuance of these notices, which is causing issues for many injured people and their practitioners. We requested the Minister urgently consider options to address these delays.

We also noted that the forms required to apply for the certificates must be submitted via fax, which is causing difficulties for practitioners working remotely during the pandemic. We requested the Minister consider allowing

for the electronic lodgement of documents with Services Australia / Centrelink, which would greatly assist in terms of accessibility and practicality.

Access to funeral benefits under the CTP scheme

The Injury Compensation Committee contributed a letter to the State Insurance Regulatory Authority (SIRA) outlining concerns that some NSW CTP insurers appear to be denying access to funeral benefits under the current CTP scheme, despite the statutory entitlement, under section 3.4 of the Motor Accident Injuries Act 2017 (the Act), to reasonable funeral expenses for every person killed in a motor vehicle accident in NSW on or after 1 December 2017 (with some limited exceptions).

In our submission, we requested that SIRA:

1. provide statistics on the number of funeral benefit claims paid annually, to identify whether the scheme is operating as intended and whether claimants are aware of, and being given access to, their statutory entitlements, and
2. engage with NSW CTP insurers to ensure that they are aware of their obligations under the Act and are proactively reaching out to families, as they are required to do under the workers compensation scheme, when notified of a road user's death.

Draft revised workers compensation guidelines for allied health treatment and hearing service provision

The Injury Compensation Committee contributed to a letter to SIRA. To avoid unnecessary confusion, the submission suggested that SIRA develop a separate guidance document, dealing exclusively with hearing service providers, once the outcomes of a current SIRA review into services to support people with work-related hearing loss in the NSW workers compensation system become available.

The submission also suggested that additional guidance as to what is necessary to become approved as a treatment provider, and maintain approval, would be useful.

National Disability Strategy – Stage 2 Consultations

The Law Society members of the Diversity and Inclusion Committee contributed to a submission to the Law Council of Australia, to provide feedback to the Department of Social Services as part of Stage 2 Consultations for a new Disability Strategy. The National Disability Strategy (2010-2020) (the current Disability Strategy) represents the first commitment by government at all levels to develop a national approach to disability policy and includes the National Disability Insurance Scheme. The Position Paper proposes to retain parts of the current Disability Strategy, including the current vision and the six outcome areas.

The Law Society is broadly supportive of the Position Paper and made suggestions to extend measures by focusing on workplace participation, integrating national strategies developed to promote gender equality and monitoring progress.