



13 September 2024

Ms Susan Templeman MP
Chair
House of Representatives Standing Committee on Social Policy and Legal Affairs
PO Box 6021
Parliament House
CANBERRA ACT 2600

By email: spla.reps@aph.gov.au

Dear Chair

Inquiry into family violence orders

1. The Law Council of Australia appreciates the opportunity to have appeared before the House of Representatives Standing **Committee** on Social Policy and Legal Affairs on 30 August 2024 in relation to its inquiry into family violence orders.
2. During the Law Council's appearance, the Law Council was asked by the Hon Shayne Neumann MP whether there is a structured process in place to facilitate pro bono legal assistance for family law matters, and, if not, whether the Law Council should establish such scheme.¹ Despite providing some preliminary comments in response, the witnesses representing the Law Council undertook to respond further Mr Neumann's question on notice.²

The role of pro bono legal services in Australia

3. As the Law Council remarked in its 2018 Final Report of the Justice Project, the pro bono contribution of the Australian legal profession is a substantial—and celebrated—aspect of Australia's legal culture.³ Australian lawyers provide hundreds of thousands of pro bono work hours every year to those who are otherwise unable to access legal services.
4. We were particularly pleased to note that, in the 2022–23 financial year, individual solicitors and barristers who are signatories to the Australian Pro Bono Target reported undertaking 700,910 hours of 'pro bono legal services', an increase of 8.6 per cent on the previous financial year.⁴

¹ Commonwealth of Australia, House of Representatives Standing Committee on Social Policy and Legal Affairs, Inquiry into family violence orders (Committee Hansard, Proof Copy, 30 August 2024), 9 (the Hon Shayne Neumann MP).

² Ibid 9 (Ms Jaquie Palavra, Mr Trevor McKenna).

³ Law Council of Australia, *The Justice Project: Legal Services* (Final Report, August 2018) <<https://lawcouncil.au/files/web-pdf/Justice%20Project/Final%20Report/18%20-%202018%2009%20-%20Final%20-%20Legal%20Services%20%28Part%20%29.pdf>> 13-15.

⁴ Australian Pro Bono Centre, 16th Annual Performance Report of the National Pro Bono Target (September 2023) <<https://www.probonocentre.org.au/wp-content/uploads/2023/09/16th-Performance-Report-of-the-National-Pro-Bono-Target-2023-FINAL.pdf>> 4.

5. Nonetheless, we recognise that there are ongoing challenges with meeting demand for individuals that require pro bono legal support for their family law matter—including victim-survivors of family violence—noting in particular that disadvantaged individuals often have complex legal needs, and face multiple barriers to accessing justice, particularly in regional, rural and remote areas.
6. Traditionally, there has been high demand for pro bono services for matters involving family law (among other areas).⁵ For example, of the 632 applications for pro bono assistance received by Law Access Western Australia in the 2022-23 financial year, 15 per cent of applications related to family law matters—more than immigration matters (14 per cent) and criminal matters (nine per cent).⁶ Further, 20 per cent of applicants reported that they were experiencing, or had experienced, family or domestic violence.⁷
7. While there are structured pro bono referral schemes and organisations available in each state and territory to refer legal matters to law firms, solicitors, or barristers,⁸ these schemes are not uniform, and are subject to capacity constraints. Further, many commercial law firms do not have expertise in family law or family violence matters, so formal pro bono referral pathways are rarely an effective avenue for these needs.⁹
8. We note, however, that substantial pro bono, or ‘low bono’ legal assistance in Australia is also undertaken by small suburban law firms and sole practitioners, but is not formally recorded as pro bono work in some instances. For example, a private practitioner may elect to not issue an invoice—or issue a heavily discounted invoice—to a particular client for their family law matter. While we understand, anecdotally, that pro bono assistance of this kind is routinely occurring, it is difficult to measure its prevalence.

The continued need for investment in the legal assistance sector

9. Pro bono assistance—whether it is recorded formally or not—should not be regarded as a substitute for properly funded legal assistance from the government in areas of identified need, especially family law and family violence. In this respect, we note that Dr Warren Mundy’s Independent Review of the National Legal Assistance Partnership (NLAP) Final Report emphasised the scale of unmet legal need in civil matters in Australia.¹⁰
10. We, therefore, urge the Committee to endorse Recommendation 5 of Dr Mundy’s Final Report, which recommends that governments should provide additional funding for civil legal assistance services, including early intervention and mediation, to allow legal assistance providers to offer a greater number of services, and prevent unresolved civil matters becoming criminal matters.¹¹

⁵ See Law Council of Australia, *2024 National Pro Bono Target Review: Consultation Paper* (Submission to the Australian Pro Bono Centre, 4 March 2024) <<https://lawcouncil.au/resources/submissions/2024-national-pro-bono-target-review-consultation-paper>>.

⁶ Law Access, *Annual Report 2022-23* (2023) <<https://lawaccess.org.au/lawp/wp-content/uploads/2023/09/ANNUAL-REPORT-2023.pdf>> 5.

⁷ Ibid.

⁸ Australian Pro Bono Centre, *Pro Bono Referral Schemes & Organisations* (Web Page, 2024) <<https://www.probonocentre.org.au/pro-bono-referral-schemes-and-organisations/>>.

⁹ Dr Warren Mundy, *Independent Review of the National Legal Assistance Partnership* (Final Report, March 2024) <<https://www.ag.gov.au/sites/default/files/2024-05/nlap-review-final-report.PDF>> 67.

¹⁰ Ibid 51-61.

¹¹ Ibid 58 [Recommendation 5].

11. More broadly, we reiterate the 12 recommendations contained in our initial submission to this inquiry,¹² several of which emphasise the urgent need for increased funding to Australia's legal assistance sector, in line with the key funding recommendations in Dr Mundy's Report.
12. We welcome, in this regard, the Commonwealth Government's announcement on 6 September 2024 that a Heads of Agreement has been signed for a new National Access to Justice Partnership.¹³ The Commonwealth's confirmed additional commitment of nearly \$800 million over five years, represents a substantial increase on previous years, and will go some way to address Dr Mundy's recommendations, including by providing a more enduring commitment on the part of the Commonwealth to fund the legal assistance sector.¹⁴
13. We strongly support the focus on uplifting legal assistance services to respond to gender-based violence and achieving pay parity across the sector. We expect this focus will represent a positive step forward in supporting individuals who are affected by, and are escaping, family violence. However, after years of stagnant Commonwealth funding in this area, more funding is needed, particularly noting that the Commonwealth's new funding commitments fall significantly short of the quantum recommended by Dr Mundy.¹⁵ It will also be critical that decisions regarding specific funding allocations are made promptly, so as to provide much-needed funding certainty to organisations within the sector, including Community Legal Centres.
14. We invite the Committee to build on this momentum as it nears the completion of this inquiry, to ensure that the Commonwealth continues to work with its State and Territory counterparts with a view to implementing Dr Mundy's recommendations in full.

Contact

15. If the Law Council can be of any further assistance to the Committee in the course of its inquiry, please contact Ms Natalie Cooper, Senior Policy Lawyer [REDACTED] at [REDACTED]

Yours sincerely


Greg McIntyre SC
President

¹² Law Council of Australia, *Inquiry into family violence orders* (Submission to the House of Representatives Standing Committee on Social Policy and Legal Affairs, 6 August 2024) <<https://lawcouncil.au/resources/submissions/inquiry-into-family-violence-orders>>.

¹³ The Hon Anthony Albanese MP, *Meeting of National Cabinet* (Media Release, 6 September 2024) <<https://www.pm.gov.au/media/meeting-national-cabinet-7>>.

¹⁴ See Law Council of Australia, *National Access to Justice Partnership* (Media Release, 6 September 2024) <<https://lawcouncil.au/media/media-releases/national-access-to-justice-partnership>>.

¹⁵ *Ibid.*