

12 November 2020

The Honourable Tony Pagone QC  
Chair  
Royal Commission into Aged Care Quality and Safety  
GPO Box 1151  
ADELAIDE SA 5001

By email: [ACRCfinalsubmissions@royalcommission.gov.au](mailto:ACRCfinalsubmissions@royalcommission.gov.au)

Dear Chair

### **Counsel Assisting's final submissions**

Thank you for the opportunity to provide a submission to the Royal Commission into Aged Care Quality and Safety (**Royal Commission**) in response to the Counsel Assisting's final submissions. Due to the limited timeframe for responses, the Law Council of Australia (**Law Council**) has been unable to review the recommendations in detail. It has however received the following responses.

#### **1. Inspector-General of Aged Care**

The Law Institute of Victoria (**LIV**) supports paragraphs 248 to 257 of the Counsel Assisting's final submissions, which relate to the proposal of an Aged Care Inspector-General (recommendation 6).

The Law Council's [submission](#) to the Royal Commission highlights the significance of an independent oversight mechanism with the power to conduct a review of the Aged Care Quality and Safety Commission's (**ACQSC**) complaints process. It notes the limitations of the Commonwealth Ombudsman's existing powers of investigation, particularly given the fact that there is no requirement for the ACQSC to respond to the Ombudsman's report. Accordingly, the LIV recommended the creation of a dedicated Aged Care Ombudsman to oversee the performance of the ACQSC, based on the experiences and complaints from service providers, complainants and their families. The LIV considers that the proposal of an Aged Care Inspector-General is a suitable alternative, and will address its concerns.

#### **2. Access to justice**

The Law Council reiterates the points raised in its submission regarding access to justice for individuals, carers and family members in relation to aged care. Despite acknowledging the important role of advocacy in the aged care system, the Counsel Assisting's recommendations do not explicitly call for better access to legal assistance.

The Law Council is concerned that existing funding for legal assistance services for older persons is inadequate. Fewer than three per cent of legal aid grants are made for civil matters, which are often of most relevance to older persons.<sup>1</sup> Further, in the 2018/2019

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<sup>1</sup> Law Council, Submission to the Royal Commission into Aged Care Quality and Safety (July 2020) 42 citing National Legal Aid Statistics Report, 'Practitioner Type' (for Financial Year 2019-2020 as at May 2020).

financial year, just over one per cent (1,862 out of 149,814) of approved legal aid grants were for persons aged 65 years and over,<sup>2</sup> despite this group making up 16 per cent of the population.<sup>3</sup> Meanwhile, community legal centres are reportedly turning away at least 100,000 people per year.<sup>4</sup>

Accordingly, the Law Council recommends that the Australian and state and territory governments provide substantial additional funding for legal assistance services to provide specialist advice, representation and education for older persons to ensure accountability in the provision of aged care, and to uphold their rights. This should include tailored support for diverse groups and First Nations' community-controlled services. Particular regard should also be had to the delivery of services in rural, regional and remote areas where there are significant concerns regarding levels of unmet legal need.

Please contact Ms Leonie Campbell, Deputy Director of Policy, on (02) 6246 3711 or at [leonie.campbell@lawcouncil.asn.au](mailto:leonie.campbell@lawcouncil.asn.au) in the first instance, if you require further information.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Pauline Wright', written in a cursive style.

**Pauline Wright**  
**President**

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<sup>2</sup> Ibid citing National Legal Aid Statistics Report, 'Age' (for Financial Year 2019-2020 as at May 2020) <<https://nla.legalaid.nsw.gov.au/nlareports/reportviewer.aspx?reportname=AgeIndicator>>.

<sup>3</sup> Ibid citing ABS, *Australian Demographic Statistics* (Catalogue No. 3101.0, June 2019).

<sup>4</sup> Ibid citing Law Council, Submission to Treasury, *2020-21 Pre-Budget Submission* (20 December 2019) <<https://www.lawcouncil.asn.au/docs/cd726d84-2459-ea11-9403-005056be13b5/3727%20-%20Pre%20Budget%20submission%202020-21.pdf>> 17 [54].