

# NSW ELECTION 2023

DECEMBER 2022



NEW SOUTH WALES  
BAR ASSOCIATION

## POLICY STATEMENT

The New South Wales Bar Association is committed to policies which promote the proper administration of justice and fundamental legal principles. We recognise that it is essential that every member of the community is provided with the benefits of an independent, impartial and properly resourced justice system.

### 1. State Courts and Tribunals

A strong, independent and properly resourced court system is essential to the proper administration of justice in this State. The New South Wales Bar Association calls on all political parties to provide the necessary funding to our courts and tribunals to ensure that the justice system functions efficiently and that the benefits of the administration of justice are reasonably and equally available to all members of the community.

The Association notes that finalisation rates for District and Local Courts were forecast to continue declining in the State's 2022-23 budget papers. Funding allocated in the 2022-23 budget is insufficient to address the backlog arising from the COVID-19 pandemic and other demands on the NSW court system.

The Association calls on all political parties to commit to:

- increasing permanent appointments to the Local, District and Supreme Courts;
- Addressing court infrastructure, including updating technology systems;
- Addressing accessibility issues in courthouses to accommodate persons with disability

### 2. First Nations People

The New South Wales Bar Association considers that there needs to be a genuine commitment from Government to policies which support self-determination for First Nations people, as well as addressing the continuous over-representation of Indigenous people in custody.

The Association calls on all political parties to:

- establish in legislation a fully funded Walama Court to address the continuing over-representation of First Nations people in the criminal justice system, which would also deliver cost savings from reduced reoffending;
- raise the minimum age of criminal responsibility to 14 years in line with international standards, as the current minimum age at 10 has created a cycle of disadvantage that disproportionately affects Indigenous children;
- implement the recommendations of the Upper House *Inquiry into the failure to proclaim the commencement of Schedule 1 of the Fisheries Management Amendment Act 2009 concerning Aboriginal cultural fishing*, including:
  - commencing section 21AA of the *Fisheries Management Act 1994* (NSW) without further delay;
  - ceasing all surveillance, compliance actions and prosecution actions against Aboriginal cultural fishers;
  - reviewing and withdrawing any penalty infringement notices issued to Aboriginal individuals on the South Coast who were practising cultural fishing;
- consider and take steps to progress the Uluru Statement from the Heart and in particular the development of a treaty mechanism and truth-telling processes;

- establish a unit within Government to support the rollout and expansion of the federal justice reinvestment program to ensure it contributes sufficient resources to enable the rollout to Aboriginal communities in NSW and to ensure that it coordinates its efforts with Just Reinvest NSW and other bodies engaged in supporting justice reinvestment;
- repeal presumptive sentencing regimes which have a disproportionate effect on Aboriginal offenders;
- abolish the Suspect Target Management Plan used by NSW Police, which has a disproportionate impact upon Aboriginal and Torres Strait Islander people and particularly on young people;
- expand culturally appropriate community-based sentencing options across NSW;
- prioritise and fund rehabilitation programs (including drug and alcohol prevention of harm and mental health treatment);
- pursue initiatives to make the coronial system more responsive to the needs of First Nations families and communities, including acting on the recommendations of the Select Committee on the coronial jurisdiction in New South Wales.

### 3. Legal Aid

A substantial increase in Legal Aid funding for private practitioners is necessary to keep the justice system operating effectively and efficiently. The absence of fair, adequate and sustained funding for experienced and competent representation of legally assisted persons inhibits access to justice, especially for disadvantaged and vulnerable persons. Despite some modest funding increases in 2019, the Association considers that funding remains insufficient.

The Association calls on all political parties to:

- Redress the ongoing erosion of Legal Aid funding which has, over many years, increasingly impaired access to justice in NSW;
- Significantly increase Legal Aid fee rates for counsel in criminal, civil and family law matters to reflect what Legal Aid and the Association agree is an ideal and appropriate rate and to match the Attorney General's rate for counsel in comparable matters;
- Recognise that lack of adequate funding for Legal Aid has serious adverse consequences for all persons at every stage of the justice process and threatens the legitimacy of the entire justice system;

- Ensure that there is not a two-tiered justice system, where only a privileged minority have access to justice; and
  - Increase funding of Legal Aid to ensure eligible NSW families are able to promptly access legal representation in family law matters at their time of need, particularly in matters involving family violence.

### 4. Criminal Law

In addition to the criminal law initiatives concerning Indigenous imprisonment set out above, the New South Wales Bar Association calls upon all political parties to:

- raise the minimum age of criminal responsibility to 14 years, in line with international human rights standards and the recommendations of peak legal and medical bodies;
- implement without further delay the recommendations it has committed to from the *Report of the Special Commission of Inquiry into Crystal Methamphetamine and Other Amphetamine-type Stimulants*, including the pre-court diversion scheme, implementation of state-wide health rehabilitation services and to include reforms which have an impact on young people;
- treat the issue of personal drug use and possession as a health and social issue and implement a model for the decriminalisation of the use and possession for personal use of prohibited drugs;
- amend the *Road Transport Act 2013* to provide an exemption for medicinal cannabis from the offence of driving with a prohibited drug;
- meaningfully invest in healthcare and support options to provide alternatives to imprisonment and detention, including:
  - ensuring timely access to mental health care for inmates in correctional centres, and providing trained, culturally appropriate mental health care for Aboriginal and Torres Strait Islander people in correctional and mental health facilities;
  - increasing support for Aboriginal Community Controlled Organisations and Aboriginal Community Controlled Health Organisations to deliver culturally safe primary health care for First Nations people.
- Fund the expansion of the NSW Child Sexual Offence Evidence Program beyond Sydney and Newcastle District Courts.

## 5. NSW Coronial System

The New South Wales Bar Association supports modernisation and reform of the NSW coronial system. The current system is not optimally designed, structured or co-ordinated.

Complementing the prioritisation of initiatives to make the coronial system more responsive to First Nations families and communities, the New South Wales Bar Association calls on all political parties to give full weight to the detailed findings and recommendations of the Select Committee on the coronial jurisdiction in New South Wales and commit to major reform of the coronial system, including:

- a new Coroners Act;
- a specialist court with specialist jurisdiction;
- a strategic oversight board or committee;
- a coronial public health and safety research unit;
- sufficient resources to enable all s 23 inquests to be completed within 12 months of a death being reported, and 18 months to complete investigations into all preventable deaths (noting that these time frames may not be achievable for matters where there are related disciplinary or curial processes);
- a statutory mandatory response regime; and
- a Koori Engagement Unit.

## 6. Human Rights

The New South Wales Bar Association calls on political parties to:

- enact a statutory bill of rights for NSW, taking into account the experience under the Victorian, ACT, and Queensland legislation. A NSW Human Rights Act should:
  - require all legislation to be interpreted in accordance with Australia's international human rights obligations;
  - provide for all proposed legislation and subordinate legislation to be scrutinised by Parliament against these standards;
  - strengthen the mandate of the Parliament's Legislation Review Committee to carry out such scrutiny; and
  - allow for a declaration that legislation is incompatible with such standards.

## 7. Personal Injury

The Association calls on all political parties to:

- amend the flawed definition of a 'minor injury' in the *Motor Accident Injuries Act 2017* (NSW) (MAI Act) scheme, which is too broad and excludes many genuinely injured people from adequate compensation;
- adopt the process used for workers compensation claims under the MAI Act, which would allow injured people to understand the nature of a dispute, and provide earlier access to a determination of their rights; and
- continue to liaise with the Bar Association about improvements to the process and procedure of the Personal Injury Commission of NSW.

## 8. Climate Change

The New South Wales Bar Association considers existing legal and policy coordination frameworks to be inadequate in addressing climate change. In particular, to ensure that New South Wales is able to contribute meaningfully to Australia achieving compliance with its commitments under the Paris Agreement. The Association calls upon all political parties to:

- Commit to tangible reforms at a state level, by:
  - establishing a dedicated Department or Minister for climate change;
  - setting up a Statutory Commission or Standing Parliamentary Committee of Inquiry into climate change; and
  - identifying what reforms are required to environment and planning laws to enable NSW to facilitate the energy transition and to otherwise mitigate the effects of climate change.

## 9. Family, Care and Adoption

The Association calls on all political parties to:

- recognise that funding, resourcing and maintaining legal resources for families and children is a State as well as a Commonwealth responsibility;
- commit to improved funding for the care and protection system, including adequate resourcing to ensure that First Nations people and people from culturally and linguistically diverse communities have effective access to justice; and
- support and resource fair and adequate Legal Aid fee scales for counsel in family law, adoption and care and protection matters.

## **10. Alternative Dispute Resolution**

The Association calls on all political parties to:

- recognise that alternative dispute resolution (**ADR**) is of ongoing importance to the administration of justice in New South Wales;
- commit to ongoing work to increase public awareness and use of ADR to promote the “just, cheap and quick” resolution of disputes in New South Wales; and
- commit to working collaboratively with State and Federal courts, tribunals and practitioners to develop and promote the appropriate and effective use of ADR into the future.