

Productivity Commission recommendations implemented by the Australian Government

This table lists the recommendations that the Australian Government has implemented, or is in the process of implementing, as at 4 April 2016.

Relevant Recommendation number/s	Commonwealth Response
<p>5.3 To support the identification and assistance of disadvantaged people with complex legal needs:</p> <ul style="list-style-type: none"> • legal health checks should be developed • legal and community service providers should be encouraged to coordinate services to provide more outreach and holistic services, and • the proposed Community Legal Education Collaboration Fund should assess the most effective way to support the legal education of non-legal community workers. Training materials should be shared among legal assistance providers and between jurisdictions. • Forums should reassess the mix of services to promote efficient service delivery by adapting to changing needs. 	<p>The Commonwealth provided funding to the National Association of Community Legal Centres in 2013 to develop a legal health check to be used by community workers to identify legal problems in disadvantaged clients.</p> <p>The Legal Health Check is an online legal needs screening tool that can be used by lawyers, community workers, and individuals. A number of states are already utilising the resource.</p> <p>The need for coordination of legal assistance services was a key focus of discussions with the states and territories, and the legal assistance sector during the development of the National Partnership Agreement on Legal Assistance Services.</p> <p>Collaborative service planning is now a requirement under the National Partnership Agreement. This process includes the coordination of community legal education at state/territory level, consistent with this recommendation. See more on service planning below.</p>
<p>21.5 The Australian, state and territory governments should agree on priorities for legal assistance services and should provide adequate and stable funding so that these priorities can be broadly realised.</p> <p>The Australian, State and Territory Governments should publicly report each year on the extent of any failure to meet agreed coverage and priorities.</p>	<p>The Strategic Framework sets out key principles and high level policy direction for the legal assistance sector. No payments or reporting are attached to the Framework.</p> <p>The Framework was developed in consultation with the states and territories and the legal assistance sector.</p> <p>The National Partnership Agreement sets out key priorities for the sector. Performance reporting requirements are outlined in the National Partnership Agreement and linked to its objectives and outcomes.</p> <p>Commonwealth payments under the National Partnership Agreement are contingent on satisfactory performance reports by the states and territories.</p>
<p>21.6 Commonwealth funding for legal assistance services should be allocated:</p> <ul style="list-style-type: none"> • according to models that reflect the relative costs of service provision and indicators of need • to encourage funding participation by state and territory governments. <p>The Indigenous Legal Assistance Programme</p>	<p>Since 1 July 2015, Commonwealth funding under the National Partnership Agreement and Indigenous Legal Assistance Programme has been allocated using specific funding allocation models for each funding stream - legal aid commissions, community legal centres and Indigenous legal assistance services.</p> <p>The three models follow a consistent methodology and provide an evidence base for allocating available Commonwealth funding between jurisdictions. The models</p>

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<p>funding model should be updated to reflect more contemporary measures of legal need.</p>	<p>achieve this by accounting for differences in legal need and the cost of delivering comparable legal assistance services between jurisdictions.</p> <p>Distributing Commonwealth funding through an evidence-based funding allocation model has enabled the establishment of new civil law services. For example, the Northern Territory Legal Aid Commission was able to introduce a Minor Advice Civil Service clinic to assist disadvantaged people with their civil law problems, a gap identified by the Productivity Commission in its report. The clinic will partner with legal and non-legal services in Darwin to assist disadvantaged people to deal with civil legal problems such as housing, employment, and discrimination.</p>
<p>21.7 Legal assistance forums in each state and territory should be used to reach agreement between the four main legal assistance providers as to their respective roles in addressing the service priorities.</p> <p>Allocation decisions should be informed by assessments of legal need and the efficiency and effectiveness of service providers.</p>	<p>Collaborative service planning encourages service providers to consider their respective roles in addressing service priorities, using an evidence-based assessment of legal need.</p> <p>The National Partnership Agreement requires that states and territories are informed by the outcomes of collaborative service planning when distributing Commonwealth and state funding to community legal centres.</p> <p>Service planning requirements under the National Partnership Agreement were developed with a view to building a collaborative sector wide approach to service provision. This philosophy is consistent with the Productivity Commission’s recommendations, including recommendation 5.3 on sharing training and community legal education resources.</p> <p>The Commonwealth’s involvement in service planning is to facilitate information sharing between jurisdictions and remain actively engaged in issues affecting the sector.</p>
<p>25.4 The Law, Crime and Community Safety Council, the Law Council of Australia, the Australian Legal Assistance Forum and courts should develop and implement reforms to collect and report data from courts, tribunals, ombudsmen, legal assistance providers and legal service providers by 1 July 2016.</p> <p>Reform in data collection and reporting should include:</p> <ul style="list-style-type: none"> • common definitions and collection protocols • linking databases and de-identifying 	<p>This recommendation has been partially implemented.</p> <p>A National Legal Assistance Data Standards Manual was developed, in consultation with the sector, and finalised on 1 July 2015. The Manual standardises definitions, counting rules and collection protocols for the legal assistance sector. Adherence with the manual is required by both the National Partnership Agreement and Indigenous Legal Assistance Programme funding agreements.</p> <p>It is acknowledged that this recommendation is much broader than the legal assistance sector. However, this project is a starting point to collecting consistent and comparable data across the legal assistance sector.</p> <p>The Commonwealth has provided a one-off grant to the</p>

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<p>data sets</p> <ul style="list-style-type: none"> • developing outcomes based data standards • designing data collection systems that encourage policy-relevant data. In particular, the Community Legal Services Information System should be re-designed to collect more useful information. 	<p>National Association of Community Legal Centres to develop and implement a replacement for the Community Legal Services Information System that is currently used by community legal services and family violence prevention legal services for recording data and case-management. The replacement system will incorporate data definitions consistent with the manual.</p>
<p>16.1 & 16.2 Court fees and cost recovery</p>	<p>On 1 July 2015, the <i>Federal Courts Legislation Amendment (Fees) Regulation 2015</i> amended the <i>Federal Court and Federal Circuit Court Regulation 2012</i> to, amongst other things, increase cost recovery levels and fee parity with State courts by increasing all general federal law court fee categories (except for those fees not subject to a biennial fee increase). The family law fee component of the regulations were the subject of two disallowances by the Senate on 25 June and 11 August 2015.</p> <p>The Government’s policy intention to increase Family Court fees has not changed.</p>
<p>8.2 All government agencies that have significant interactions with citizens and do not have a dispute resolution management plan should accelerate their development and release them publicly</p>	<p>The Model Litigant Obligation, set out at Paragraph 4.2, Part of the Schedule to Appendix B to the <i>Legal Services Directions 2005</i> (the Directions) - requires the Commonwealth and its agencies to give consideration to the use of alternative dispute resolution processes where appropriate.</p> <p>Guidance Note 12 directs agencies to ‘always consider alternatives to litigation’. The Guidance Note provides information on alternative dispute resolution including the Commonwealth’s obligations to comply with the Model Litigant Obligation and the <i>Civil Dispute Resolution Act 2011</i>, and choosing ADR processes and providers</p> <p>ADR is used widely by Commonwealth agencies.</p>
<p>8.4 Organisations involved in dispute resolution processes should develop guidelines to assist administrators and decision-makers to allocate disputes to an appropriate mechanism for attempting resolution.</p>	<p>Guidance Note 6 <i>Handling litigation and alternative dispute resolution during the caretaker period</i> and Guidance Note 12 <i>Use of alternative dispute resolution</i> provide information to the Commonwealth and its agencies about alternative dispute resolution.</p> <p>Guidance note 12 starts by directing agencies to ‘always consider alternatives to litigation’. The Guidance Note provides information on ADR including the Commonwealth’s obligations to comply with the Model Litigant Obligation (incorporating the use of ADR) as set out in the <i>Legal Services Directions 2005</i> and the <i>Civil Dispute Resolution Act 2011</i>, and choosing ADR processes and providers.</p>

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	<p>Guidance Note 6 provides the Commonwealth and its agencies with information about the use of alternative dispute resolution during caretaker periods.</p>
<p>12.1 Governments should ensure that parties have an overarching responsibility to assist the courts and tribunals in the just, quick and cheap resolution of disputes and that courts need to rigorously enforce these kinds of obligations</p>	<p>The Model Litigant Obligation, set out at Paragraph 4.2, Part of the Schedule to Appendix B to the <i>Legal Services Directions</i> 2005 (the Directions) - requires the Commonwealth and its agencies to act honestly and fairly in handling claims and litigation. The obligation includes agencies giving consideration to the use of alternative dispute resolution processes where appropriate. The obligation does not, however, prevent the Commonwealth from acting firmly to protect its interests and the interests of the Commonwealth.</p> <p>While Commonwealth officers owe obligations to the Commonwealth under the Directions, the Directions are not intended to provide a remedy, cause of action or any personal rights in addition to those already available through administrative or judicial review. This was confirmed in <i>Caporale v Deputy Commissioner of Taxation</i> [2013] FCA 427.</p> <p>The question of compliance with the Directions, including the Model Litigant Obligations, is a matter between the Attorney-General and the relevant Commonwealth agency or Department. Any other approach could give rise to technical arguments and result in additional costs and delay in litigation involving the Commonwealth.</p> <p>Where an individual is unhappy with the handling of their complaint by an agency, they may seek a review by the Commonwealth Ombudsman.</p>
<p>12.3 Governments should be subject to model litigant obligations.</p> <ul style="list-style-type: none"> • Compliance should be monitored and enforced, including by establishing a formal avenue of complaint to government ombudsmen for parties who consider model litigant obligations have not been met. 	<p>As for recommendation 12.1, the Model Litigant Obligation, set out at Paragraph 4.2, Part of the Schedule to Appendix B to the <i>Legal Services Directions</i> 2005 (the Directions) - requires the Commonwealth and its agencies to act honestly and fairly in handling claims and litigation.</p> <p>While Commonwealth officers owe obligations to the Commonwealth under the Directions, the Directions are not intended to provide a remedy, cause of action or any personal rights in addition to those already available through administrative or judicial review. This was confirmed in <i>Caporale v Deputy Commissioner of Taxation</i> [2013] FCA 427.</p> <p>The question of compliance with the Directions, including the Model Litigant Obligations, is a matter between the Attorney-General and the relevant Commonwealth agency or Department. Any other approach could give rise to technical arguments and result in additional costs and</p>

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	<p>delay in litigation involving the Commonwealth.</p> <p>The Compliance Framework, introduced in 2013, emphasised greater agency responsibility for understanding the Directions and ensuring compliance, with the Office of Legal Services Coordination’s role being to receive alleged breach notifications to identify systemic issues and deficiencies in understanding or operation of the Directions.</p> <p>Where an individual is unhappy with the handling of their complaint by an agency, they may seek a review by the Commonwealth Ombudsman.</p> <p>The Commonwealth obligation to act as a model litigant has its origins in Common Law and can be traced back to the 1912 case of <i>Melbourne Steamship Co Ltd v Moorehead (1912)</i> 15 CLR 333.</p> <p>The introduction of the first iteration of the Directions in 1999 codified the obligation.</p> <p>More recently in 2012, the High Court in <i>ASIC v Hellicar</i> noted that:</p> <p><i>the duty to act as a model litigant requires the Commonwealth and its agencies, as parties to litigation, to act fairly, with complete propriety and in accordance with the highest professional standard, but within the same procedural rules as govern all litigants. But the procedural rules are not modified against model litigants – they apply uniformly.</i></p>
<p>23.2 Governments should employ a pro bono coordinator.</p>	<p>The <i>Legal Services Directions 2005</i> require agency heads to coordinate the procurement of legal services to ensure that pro bono providers are not discriminated against because they have acted or may act in proceedings against the Commonwealth. The exception to this requirement is if an actual conflict of interest would arise. The Australian Government has not to date adopted the Victorian Government’s ‘coordinator role.’ The Australian Government is monitoring the effectiveness and outcomes of this proposal with interest and may consider the proposal in light of the outcomes of the Secretary’s Review of Commonwealth Legal Services to be completed by June 2016.</p>
<p>23.4 Pro bono services should be subject to robust evaluation.</p>	<p>The Commonwealth collects data on the number of pro bono hours legal practitioners on the Legal Services Multi-use List provide. The data indicates that the requirement to report pro-bono under the Legal Services Multi-use List is contributing to increasing pro bono services offered by law firms on the Legal Services Multi-use list. The Commonwealth may consider further strengthening the</p>

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	<p>evaluation of pro bono services in the context of the outcomes of the Secretary’s Review of Commonwealth Legal Services to be completed by June 2016.</p>
<p>24.1 Examine the way family dispute resolution is delivered by different providers across the system.</p>	<p>The Attorney-General’s Department commissioned research from KPMG to examine the future needs of family law services, including demographic change, partnerships with other service providers and options for funding models. The Final Report was provided to Attorney-General’s Department in January 2016. During 2016, Attorney-General’s Department will be undertaking a consultation process with service providers on the options in the report.</p> <p>It is anticipated that the Family Law Council will consider some relevant issues as part of its terms of reference on complex families (see further below).</p>
<p>24.2 Amend the Family Law Act to restrict personal cross examination by those alleged to have used violence</p>	<p>The Australian Government acknowledges that the cross-examination of victims of family violence in family law courts by the alleged perpetrator of the violence can be traumatic.</p> <p>In March 2016, Attorney-General’s Department convened a roundtable discussion with key stakeholders on this topic. The Government is considering the outcomes of this discussion.</p> <p>The <i>Family Law Act 1975</i> includes protections for vulnerable people involved in family law proceedings such as the ability to enable testimony by video, or to prevent offensive and humiliating questions. The courts can also apply their Family Violence Best Practice Principles and prepare Safety Plans for parties and witnesses.</p> <p>The Government has commissioned a National Family Violence Bench Book to be made available in June 2017. It will be a comprehensive online tool for judges across Australia, covering civil and criminal laws in Commonwealth, State and Territory jurisdictions. It will promote best practice and consistency in judicial decision making in cases involving family violence, and greater awareness of the context and dynamics of family violence.</p>
<p>14.1 Various proposals to assist self-represented litigants</p>	<p>The Australian Government acknowledges the importance of ensuring that litigants, particularly self-represented litigants, understand clearly how to bring their case and fully engage with the justice system.</p> <p>In the family law context, where self-represented litigants make up around 35 percent of parties in final orders, the Government is developing a Model Parenting Orders Handbook. This will be a practical resource to assist parents and legal practitioners with drafting parenting</p>

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	orders. It will assist litigants in minimising ambiguity and improve the workability of court orders, particularly those prepared without legal or judicial assistance.
<p>24.3 Consider problems caused by division of jurisdiction in the areas of family law, child protection and family violence.</p>	<p>The Australian Government agrees that coordination between the federal family law system and state and territory child welfare and family violence systems is crucial.</p> <p>The Family Law Council’s interim report to the Attorney-General on families with complex needs considered the legal and practical obstacles to greater inter-jurisdictional cooperation in the family law and child protection jurisdictions. Council made a number of recommendations in this report, including in relation to amendments to the Family Law Act that would facilitate State and Territory children’s courts exercising family law jurisdiction in certain circumstances. The Government is considering the recommendations made in this report. Council’s final report to the Attorney-General due on 30 June 2016.</p> <p>Attorney-General’s Department has actively worked over a number of years to improve collaboration between the federal family law courts and the state and territory children’s courts. As part of this work, Attorney-General’s Department has hosted regular National Collaboration Meetings with stakeholders from both systems; commissioned reports on information sharing; and provided funding towards the evaluation of an initiative in Victoria where officers from the Department of Human Services were out-posted into two registries of the family law courts.</p>