

# NSW ELECTION 2019

FEBRUARY 2019

## POLICY STATEMENT



NEW SOUTH WALES  
BAR ASSOCIATION

The New South Wales Bar Association is committed to policies which promote the proper administration of justice and represent 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 Bar Association is particularly concerned about the lack of resourcing and other support for the District Court and its judges. The lack of resources has resulted in long delays in matters being heard, which unacceptably impacts adversely on defendants, witnesses and victims of crime.

### 2. Indigenous Issues

The New South Wales Bar Association considers that there needs to be a genuine commitment from Government to address the worsening problem of Indigenous incarceration rates. The Association calls on all political parties to:

- introduce specific sentencing legislation to allow courts to take account of unique systemic and background factors affecting Indigenous peoples;
- establish properly resourced specialist Aboriginal and Torres Strait Islander sentencing courts to be designed, implemented and in consultation with Aboriginal organisations (the Walama Court);
- establish an independent justice reinvestment body, overseen by a Board with Aboriginal and Torres Strait Islander leadership, and initiate justice reinvestment trials to promote the diversion of resources from the criminal justice system to community-based initiatives that aim to address the causes of Indigenous incarceration;
- revise bail laws to require bail authorities to consider cultural issues that arise due to a person's Aboriginality;
- repeal mandatory or presumptive sentencing regimes which have a disproportionate effect on Aboriginal offenders;
- expand culturally appropriate community-based sentencing options across NSW;
- legislate to ensure that fine default cannot result in imprisonment in lieu of or as a result of unpaid fines;
- abolish offences relating to offensive language;
- prioritise rehabilitation programs (including drug and alcohol prevention of harm and mental health treatment); and
- raise the age of criminal responsibility to 12 and the minimum age of children in detention to 14 in accordance with the recommendations of the Australian Law Reform Commission's Pathways to Justice Report.

### 3. Legal Aid

The New South Wales Bar Association calls upon all political parties to:

- redress the ongoing erosion of Legal Aid funding which has, over many years, increasingly impaired access to justice in NSW;
- redress the imbalance arising from the fact that there has not been an increase in legal aid fee rates for private practitioners in over a decade despite there being across the board increases of at least 25% for all Government lawyers;
- recognise that without adequate funding for Legal Aid:
  - victims of crime, police and other participants in the justice system suffer;
  - children at risk and other vulnerable people are left without adequate representation and face greater risks;
  - increasing numbers of citizens are left with no option but to represent themselves, causing court delay, and substantial additional cost to other litigants and Government, and
  - innocent people are more likely to go to gaol; and
  - the legitimacy of the justice system is threatened.
- ensure that there is not a two-tiered justice system, where only a privileged minority has access to justice;
- provide the means by which all citizens might have the same practical access to courts, and to achieve equality before the law; and
- increase funding of legal aid to ensure eligible New South Wales 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:

- establish a legislative framework for determination of fitness to be tried in summary criminal matters;
- reintroduce sentence indication hearings in order to increase the number of pleas of guilty;
- increase funding for diversionary and mental health programs, particularly in regional and remote areas;
- decriminalise individual possession of small amounts of illegal drugs such as cannabis and increase investment in harm reduction and demand harm reduction strategies in relation to illicit drug use; and
- decriminalise abortion / termination of pregnancy in New South Wales. Abortion should generally be treated as a health matter and a woman's autonomy and health should be promoted. The Association proposes that New South Wales adopt a similar legislative framework to the Termination of Pregnancy Act 2018 (Qld) where:
  - a medical practitioner may perform a lawful termination on a woman upon request, up to a gestational limit of 22 weeks. After 22 weeks, a lawful termination can be performed if at least two medical practitioners agree that the termination is appropriate in all the circumstances;
  - registered health practitioners will be required to inform a woman of any conscientious objection to performing a termination and refer her to another health practitioner or provider that does offer termination of pregnancy services; and
  - medical practitioners are obliged to perform a termination only in rare, emergency cases where it is necessary to preserve the life of the pregnant woman, regardless of their objection to termination of pregnancy.

## 5. 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 and ACT legislation and the proposed Queensland legislation. A NSW Human Rights Act should:
  - (a) require all legislation to be interpreted in accordance with Australia's international human rights obligations;
  - (b) provide for all proposed legislation and subordinate legislation to be scrutinised by Parliament against these standards;
  - (c) strengthen the mandate of the Parliament's Legislation Review Committee to carry out such scrutiny; and
  - (d) allow for a declaration that legislation is incompatible with such standards.
- commit to repealing the provisions of the Anti-Discrimination Act 1977 (NSW) that provide special exemptions for private educational authorities from the statutory prohibitions against discrimination in relation to work (i.e. teachers and staff) and education (i.e. students).

## 6. Personal Injury

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

- restore fair compensation for injured motorists;
- legislate to ensure that any person who suffers personal injury should have access to an independent tenured judicial officer for the purposes of finally determining his or her rights based on the merits of the matter;
- establish a single unified system for the resolution of all personal injury claims based on the Civil Liability Act 2002;
- ensure fairness and equity in the workers compensation system;
- given the complexity of personal injury laws, protect the right of claimants battling insurance companies to obtain competent legal advice.

## 7. Family Law

The New South Wales Bar Association calls upon all political parties to:

- acknowledge that funding, resourcing and maintaining the family law system is a State as well as a Commonwealth responsibility;
- increase funding and resourcing of facilities for co-located family courts, and work with the Commonwealth Government to develop and implement co-location models of family law registries and judicial officers in local court registries, including in rural, regional and remote registries in New South Wales;
- commit to improved information sharing between State and Federal family law courts;
- provide and promote timely recognition of domestic violence orders and issues emerging in Federal jurisdictions by State authorities; and
- carefully consider and promptly respond to any recommendations from the Australian Law Reform Commission's Review of the Family Law system to improve collaboration, coordination and integration between Commonwealth and State family law systems, including family support services and family violence and child protection systems.

## 8. Alternative Dispute Resolution

The New South Wales Bar Association calls upon all political parties to:

- recognise that alternative dispute resolution (ADR) is integral to the administration of justice in New South Wales;
- commit to increasing 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.